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Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes “Pass” (P) as the default grade for typically strong work in which the student has mastered the subject, and “Honors” (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

H	Honors	Exceptional work, significantly superior to the average performance at the school.
P	Pass	Representing successful mastery of the course material.
MP	Mandatory Pass	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
MPH	Mandatory Pass - Public Health Emergency*	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
R	Restricted Credit	Representing work that is unsatisfactory.
F	Fail	Representing work that does not show minimally adequate mastery of the material.
L	Pass	Student has passed the class. Exact grade yet to be reported.
I	Incomplete	
N	Continuing Course	
[blank]		Grading deadline has not yet passed. Grade has yet to be reported.
GNR	Grade Not Reported	Grading deadline has passed. Grade has yet to be reported.

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

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The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

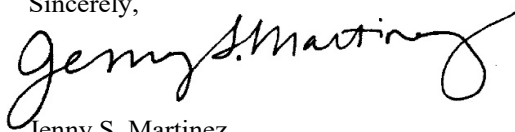
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or manderson@law.stanford.edu. We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,



Jenny S. Martinez
Richard E. Lang Professor of Law and Dean

Updated May 2020

William S. Koski
Eric and Nancy Wright Professor of Clinical Education
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January 29, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

Please accept this as my unqualified support of Brian Erickson's application for a clerkship in your chambers. Put simply, Brian possesses not only a sharp mind and first-rate writing skills, he also brings enthusiasm and good nature to his work with colleagues.

I am Professor of Law and the Eric & Nancy Wright Professor of Clinical Education at the Stanford Law School where I direct the Youth & Education Law Project (YELP), an in-house legal clinic that advocates for equality of educational opportunity for disadvantaged children and their communities. I also teach courses on education law and policy. I had the pleasure of working daily and closely with Brian when he was a student in YELP, during the winter quarter 2021, and before that as a student in my Educational Rights Workshop.

As a student in my clinic, Brian and his partner were assigned to be the lead students on a complex litigation matter in U.S. District Court. Though nominally an "appeal" from an adverse administrative law judge ruling in an Individuals with Disabilities Education Act (IDEA) matter, the case took on added complexity due to our cutting-edge disability-based discrimination claim under Section 504 of the Rehabilitation Act. Brian's client, a first-year high school student, Isaiah, with severe learning disabilities (dyslexia) had been systematically denied appropriate, evidence-based reading instruction for years by his school district and, at the time, could only read at about the fourth-grade level. For that denial, Isaiah brought a due process action against his school district which resulted in a 10-day trial and adverse ruling. Isaiah appealed that ruling and also alleged discrimination under Section 504. The crux of the Section 504 claim was that, even if Isaiah had been provided a free appropriate public education (FAPE) under the IDEA, his school district still discriminated against him on the basis of his disability because it did not provide him with the effective evidence-based literacy instruction that was provided to his non-disabled peers.

That's where Brian came in. He was tasked with not only analyzing and summarizing a several-thousand-page administrative record, he was the primary drafter of our complicated case management conference statement (complicated because we had to explain why the Section 504 claim should not be bifurcated from the IDEA claim). Because Brian and his teammate persuaded the Court to not only allow discovery to move forward on the Section 504 claim during the pendency of the Section 504 appeal, the District was willing to engage in an early settlement conference.

In preparation for the conference, Brian developed a complex critique of the ALJ's ruling for the IDEA appeal, as well as a nuanced argument that, in any event, the District's failures constituted discrimination under Section 504. Equally important, Brian made the strategic decision to detail the District's continued failures to provide Isaiah with a free appropriate education. This argument allowed the settlement conference magistrate to open up a wide-ranging negotiation that focused on Isaiah's needs and resulted in a very favorable educational placement and services for Isaiah. None of that would have been possible without Brian's careful research and writing. (I would also be remiss if I failed to mention that, during this complicated process, Brian was able to concisely and clearly provide counsel to Isaiah and his parents who are both monolingual Spanish speakers.)

The Educational Rights Workshop that Brian took with me was designed to be an intensive exploration of how law and policy can shape the nebulous, though critical, concept of equality of educational opportunity. The course not only explored the history of litigation and policy efforts to achieve educational equity, it looked to cutting edge and theoretical strategies for ensuring that all children have an equal opportunity to learn. Students in the course were required to write weekly analytic/reaction papers on the week's topic and the mix of materials provided to them, including caselaw, empirical research in education, and litigation documents such as complaints and briefs. In addition, students are expected to be prepared to participate in a robust weekly discussion on the topic.

It was in that context that I had an additional opportunity to observe Brian's analytic, writing, and oral presentation skills. Without a bit of hyperbole, I looked forward to reading Brian's weekly reaction papers with a good deal of excitement. In those papers, Brian goes well beyond a technical, workmanlike analysis of the caselaw and doctrine (which he accomplishes with ease) to a provocative and sophisticated dissection of the legal, institutional, and practical issues raised by the topic. Whether it's a

Bill Koski - bkoski@stanford.edu - (650) 724-3718

trenchant critique of the SCOTUS Title IX jurisprudence to a healthy skepticism of efforts to use the courts to advance educational rights, Brian always opens my mind and keeps me on my toes. Equally important, he's just a lively and engaging writer.

In addition to his weekly reaction papers, Brian has chosen to develop a lengthy research project that explored the political and institutional dynamics of mayoral control over local school districts. Rooted in his own experience with the New York Department of Education, Brian sought to understand, from a political theoretical perspective, whether mayoral control over schools makes sense and from an empirical perspective, whether it makes a difference. Needless to say, I'm looking forward to reading that paper.

Finally, I should mention how important Brian is to the public interest/public service and intellectual life of the student body and the law school. Whether it's his work on the Stanford Law & Policy Review, his pro bono service with the records expungement project, or his leadership with the Stanford Public Interest Law Foundation, Brian demonstrates both leadership and commitment to the law school. I am confident that he would bring that commitment to his work as a clerk in your chambers.

For all of these reasons, I heartily recommend Brian for a clerkship with you. Should you have any questions about Brian and his work with me, please do not hesitate to contact me at bkoski@law.stanford.edu or (650) 724-3718.

Sincerely,
/s/ William S. Koski

Bill Koski - bkoski@stanford.edu - (650) 724-3718

Bernadette Meyler
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January 29, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am delighted to have the chance to recommend Brian Erickson for a clerkship in your chambers. Brian is a wonderful law student whose analytic acumen is only equaled by his humility and efforts to work on others' behalf. He also happens to be a first-rate writer.

I have had the pleasure of teaching Brian in both first-year Constitutional Law and my Constitutional Theory seminar. In each context, he has participated judiciously but with great impact. Brian is one of those students who hangs back in discussion to allow others the chance to intervene without squelching their enthusiasm but then makes a critical point towards the end of the conversation while fully acknowledging the thoughtful suggestions of other students. For this reason, he is a student who is valued equally by his classmates and professors and would be a wonderful and collaborative presence in judicial chambers.

In Constitutional Law, I give an eight-hour final take-home exam that is subject to a strict word limit. The exam includes two hypothetical problems designed to test students' skills not only in identifying issues but also in addressing new questions that might not have been decided yet. It also includes an essay designed to elicit either a policy argument or an account of constitutional history. Brian wrote excellent answers with respect to all of these components. In addition to bringing relevant precedents to bear on new issues, he organized and composed his responses masterfully.

Students in Constitutional Theory could opt either to write a series of response papers based on the readings for the particular classes or to compose a lengthy final research paper. Brian chose the latter, but still participated equally in the discussion of the materials for the specific sessions, whether they touched on judicial review, the adversarial system, theories of interpretation, or another of the topics we covered.

I had the opportunity to work extensively with Brian on his paper for Constitutional Theory because I asked students to write a prospectus, then a rough draft in addition to the final research paper. I was impressed not only with his ideas and writing but also with his ability to respond to feedback and immediately incorporate it and even enhance upon what was suggested. This tendency demonstrates itself in his grades in law school; he had been disappointed in his first-quarter performance and, as a result, surveyed professors about how he could improve. The subsequent upwards trajectory of his grades speaks for itself in terms of how well he incorporated the advice he received.

His paper for the class, on "Constitutional Evangelism," was a brilliant socio-historical study of how the treatment of the Constitution as a quasi-religious document may have been connected with Christian evangelism of the 1970s and 1980s. I am hoping that Brian will revise this piece for publication. I also had the pleasure of reading another piece he wrote, on "Second Amendment Self-Defense Principles," through his participation in the Legal Studies Workshop, a seminar I run together with my colleague Barbara Fried. In that course, students are asked to present works in progress that they wish to turn into publishable articles. Brian's piece came out of his work last summer with the Giffords Law Center to Prevent Gun Violence. It was well-argued and well-received both by his peers and the seminar conveners.

Given Brian's analytical powers, his excellent writing, and his gentle camaraderie, I am certain he will make a wonderful law clerk. I hope that you will give his application serious consideration and would be more than happy to discuss any aspect of his file with you in more detail. If you wish to reach out, my cell phone number is (718) 753-4456 and my e-mail address is bmeyler@law.stanford.edu.

Sincerely yours,
/s/ Bernadette Meyler

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BRIAN ERICKSON

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The attached writing sample is a ten-page excerpt of a brief I wrote for the Kirkwood Moot Court Competition at Stanford Law School. It won the award for Best Respondent's Brief at the Competition.

The facts of the case were drawn from *Northeastern Pennsylvania Freethought Society v. County of Lackawanna Transit System*, 938 F.3d 424 (3d Cir. 2019). The dispute involved an atheist organization (Freethought) that wished to advertise on a public bus. Their ad proposal featured the word "Atheists" printed alongside a link to their website. The local transit authority (COLTS) rejected the proposal, arguing that it violated their ban on religious advertising. COLTS later accepted a version of the ad that linked to Freethought's website but did not include the word "Atheists."

I represented Freethought in a fictional appeal to the U.S. Supreme Court. My section of the brief argues that COLTS's policy violates the Free Speech Clause of the First Amendment because it discriminates against religious viewpoints.

I independently researched and wrote the entire section. I received general feedback on an earlier draft from the faculty advisor for the Competition and discussed the section with my partner.

I. COLTS’s Advertising Policy Violates the Free Speech Clause of the First Amendment Because it Restricts Speech Solely on the Basis of Religious Viewpoint.

Freethought’s proposed “Atheists” advertisement sought to build public support for, and attract likeminded people to, its organization. COLTS’s policy permits speakers to use its advertising space for this purpose. Nonetheless, COLTS refused to run Freethought’s advertisement solely because it indicated Freethought’s religious perspective. In so doing, COLTS violated the First Amendment by discriminating against Freethought on the basis of its viewpoint. Viewpoint discrimination is an odious kind of speech restriction, unconstitutional in every context and every forum. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985); *see also Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (Alito, J., concurring) (“Viewpoint discrimination is poison to a free society.”).

Speech restrictions that discriminate on the basis of viewpoint stand in contrast to other content-based restrictions on speech. In limited public forums, restrictions that regulate speech on the basis of the subject matter it addresses, rather than the viewpoint it conveys, may be justified if they are “reasonable in light of the purposes served by the forum and are viewpoint neutral.” *Cornelius*, 473 U.S. at 806. Viewpoint-based restrictions, by contrast, are always unconstitutional. *Id.*; *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107 (2001) (noting that when a “restriction is viewpoint discriminatory, we need not decide whether it is unreasonable in light of the purposes served by the forum”). Part II discusses why COLTS’s religious speech ban is unreasonable. But that analysis is unnecessary to

decide this case because the ban restricts speech on the basis of viewpoint, not subject matter.

A. COLTS’s advertising policy violates the Free Speech Clause because it prevents speakers from expressing religious viewpoints on otherwise includible subjects.

Viewpoint discrimination occurs when a government policy “denies access to a speaker solely to suppress the point of view [it] espouses on an otherwise includible subject.” *Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017) (Kennedy, J., concurring) (quoting *Cornelius*, 473 U.S. at 806). COLTS’s policy, by its very terms, aims to suppress any and all indicia of an advertiser’s religious perspective. As this Court has repeatedly affirmed, “speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint.” *Good News Club*, 533 U.S. at 112 (invalidating a school district’s practice of prohibiting “quintessentially religious” groups from renting school facilities for after-hours use); *see also Rosenberger v. Rectors & Visitors of Univ. of Va.*, 515 U.S. 819, 837 (1995) (declaring unconstitutional a public university’s policy of refusing to fund student organizations whose editorial perspectives are primarily religious in nature); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1992) (striking down a school district’s rule barring groups from gathering for “religious purposes” in facilities that were open to groups wishing to engage in similar conduct for areligious purposes). Moreover, viewpoint discrimination is no less concerning in advertising than in other contexts. “The commercial marketplace, like other spheres

of our social and cultural life, provides a forum where ideas and information flourish.” *Edenfield v. Fane*, 507 U.S. 761, 767 (1993).

The discriminatory nature of COLTS’s religious speech ban is particularly clear in light of its otherwise highly permissive advertising policy. COLTS’s advertising space is a limited public forum, but COLTS has made access to the forum relatively simple.¹ True, the advertising space is “not by tradition or designation a forum for public communication” by the general population. *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 46 (1983). But the label “limited public forum” does not necessarily indicate that the forum is difficult to access or closed off to most speakers. *See, e.g., Lamb’s Chapel*, 508 U.S. at 391-92 (acknowledging that a forum had been used “wide variety of communicative purposes,” but nonetheless analyzing it as a nonpublic forum). All it suggests is that the government has latitude to impose viewpoint neutral speech restrictions to the extent they are “inherent and inescapable in the process of limiting” the space “to activities compatible with the intended purpose of the property.” *Perry Educ. Ass’n*, 460 U.S. at 49.

¹ This Court has used the terms “limited public forum” and “nonpublic forum” interchangeably when considering the validity of content-based speech restrictions. *Compare Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 49 (1983) (providing that in a “nonpublic forum,” the government may “make distinctions in access on the basis of subject matter and speaker identity” so long as they are “reasonable in light of the purpose which the forum at issue serves”), *with Good News Club*, 533 U.S. at 106-07 (citations omitted) (noting in a “limited public forum,” the government “may be justified ‘in reserving [its forum] for certain groups or for the discussion of certain topics,’” but cannot “discriminate against speech on the basis of viewpoint and the restriction must be ‘reasonable in light of the purpose served by the forum’”).

Religion is one of only a handful of categories of speech that COLTS prohibits. Outside of those categories, advertisers are free to say virtually anything.² Under this presumptively open policy, COLTS routinely admits advertisements from a diverse range of organizations. The makeup and missions of these organizations vary, but many of their advertisements convey a similar message: “This is our organization, please consider supporting us.” Countless COLTS advertisements have conveyed this message. *See, e.g.*, App. 435-37 (depicting a recruiting advertisement for the National Guard); App. 418-20 (depicting an invitation to a local library fundraiser); App. 681-83 (depicting a public service announcement by an anti-tobacco group). Freethought wished to convey the same message, but was denied the opportunity to do so because of its atheistic viewpoint. *See Lamb’s Chapel*, 508 U.S. at 393-94 (finding viewpoint discrimination when the government restricts “religious perspective[s]” on subjects that have not been “placed off limits to any and all speakers”).

Further confirming the viewpoint discriminatory nature of its policy, COLTS ultimately *did* accept Freethought’s advertisement—just as soon as its religious perspective was removed. Clearly, advertisements for atheistic organizations (indeed, advertisements for Freethought itself) do not automatically offend COLTS’s policy. Yet Freethought’s initial proposal was rejected merely because it contained a

² In fact, the current version of COLTS’s policy omits a previous provision that granted COLTS discretion to reject ads on the basis of criteria not listed in the policy. *Compare* App. 686, *with* App. 687-88. The current policy represents a comprehensive view of the official criteria that determine whether an ad will or will not be permitted to run on COLTS’s buses.

single word, “Atheists,” that the subsequent proposal did not. COLTS does not censor other advertisers who seek to communicate the viewpoints which undergird their messages. *See, e.g.*, App. at 437 (depicting a 2013 COLTS ad for the National Guard, which declares that military servicemembers are “needed” and that enlisting will “make a difference in your community”). But when the advertisement’s viewpoint is religious in nature, COLTS imposes a separate, more burdensome rule. Differential treatment of this sort is the hallmark of viewpoint discrimination. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 391-92 (1992) (holding that a city ordinance that penalized some kinds of hateful speech but not others is viewpoint discriminatory).

B. Total bans on religious speech (including atheistic speech) are inherently viewpoint discriminatory because they single out religious perspectives, but not other perspectives, for unfavorable treatment.

Religion is a viewpoint. All religions—including atheism—provide “a specific premise, a perspective, a standpoint from which a variety of subjects may be discussed and considered.” *Rosenberger*, 515 U.S. at 831. Government policies which treat religious perspectives differently from other types of perspectives are as unconstitutional as any other policy which “distinguishes between two opposed sets of ideas” and regulates accordingly. *Iancu*, 139 S. Ct. at 2300. Depending on the nature of the policy under review, religious viewpoint discrimination can take multiple forms. Policies that favor certain religious viewpoints over others are one form. But policies like COLTS’s, which restrict *all* religious viewpoints but allow for areligious ones, are no less problematic, as they too establish a government-imposed

distinction between acceptable and unacceptable perspectives. *See Rosenberger*, 515 U.S. at 831 (“It is as objectionable to exclude both a theistic and an atheistic perspective . . . as it is to exclude one, the other, or yet another political, economic, or social viewpoint.”).

Thus, a speech restriction is not “viewpoint neutral” merely because it treats “all religions . . . alike.” *Lamb’s Chapel*, 508 U.S. at 393. Rather, the “critical question” is whether the policy denies speakers access to a forum “for any reason other than the fact that the [speech] would have been from a religious perspective.” *Id.* at 393-94. COLTS itself has stated that the answer to this question is no. Thus, its policy is unconstitutional.

1. It is viewpoint discriminatory to restrict religious speech simply because it is religious.

As this Court’s cases have made clear, religion is not *sui generis* in the sense that it cannot be compared to other ideologies which form the basis for expression. Indeed, this Court has regularly analyzed viewpoint discrimination claims arising out of religious speech policies by comparing a policy’s treatment of religion to its treatment of other “political, economic, or social viewpoint[s].” *Rosenberger*, 515 U.S. at 831; *Good News Club*, 533 U.S. at 111 (rejecting public school district’s argument that religious content “taints” speech “in a way that other foundations for thoughts or viewpoints do not”).³ Policies that impose special restrictions on religious speech,

³ This Court’s recognition that religion is readily comparable to, and stands on equal footing with, other philosophical and epistemological perspectives extends beyond its viewpoint discrimination jurisprudence. *See, e.g., Welsh v. United States*, 398 U.S. 333, 343-44 (1970) (construing a provision of the Draft Act affording

but not speech which arises out of other theoretical foundations, are viewpoint discriminatory. *Good News Club*, 533 U.S. at 111 (finding “no logical difference in kind between the invocation of Christianity by the [after-school children’s] Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons”).

COLTS’s advertising policy engages in precisely this unconstitutional practice, silencing religious advertisements simply because they are religious. As COLTS Communications Director Gretchen Wintermantel explained at trial, Freethought’s ad proposal was rejected because it contained “the word atheist in it,” and thus conveys “the belief or lack of belief in a God and religion.” App. 222. Yet COLTS unquestioningly runs advertisements whose messages sound in some other ideological foundation (for example, patriotism in a National Guard recruitment ad or natalism in a Catholic Diocese’s pro-adoption ad). COLTS’s testimony and conduct attest to its differential treatment of religious and areligious ads, and thus demonstrate the viewpoint discriminatory nature of its policy.

It is no answer for COLTS to observe that its policy treats all religious messages equally. Freethought has never contended that it would have received different treatment if its ad read, “Catholics,” “Jews,” or “Buddhists” instead of

conscientious objector status to individuals with pacifistic “religious training and belief[s]” to also protect individuals with earnestly held ethical beliefs unrooted in religion); *Wallace v. Jaffree*, 472 U.S. 38, 59-60 (1985) (invalidating a statute requiring teachers to set aside time for voluntary in-class prayer because it “characterize[s] prayer as a favored practice,” and noting that the law would be acceptable if it “merely protect[ed] every student’s right to engage in voluntary prayer during an appropriate moment of silence during the schoolday”).

“Atheists.” Rather, the relevant hypothetical comparators would include ads that read, “Vegetarians,” “Kant Devotees,” or “Meditation Practitioners.” Like “Atheists,” these words put the call out to individuals who share a certain perspective. Whether that perspective is rooted in animal ethics, German philosophy, or holistic medicine is irrelevant; the government is no more entitled to exclude one of these perspectives than another, even if the exclusion is so broad that vegetarians and carnivores, Kantians and Nietzscheans, and meditators and non-meditators are equally burdened. That COLTS quashes all religious perspectives, rather than just *some* of them, does not show that all viewpoints receive equal treatment. It merely shows that multiple viewpoints are treated as inferior. *See Rosenberger*, 515 U.S. at 831 (rejecting the notion that forum access “is not skewed so long as multiple voices are silenced,” contending instead that such exclusion shows access “is skewed in multiple ways”).

Moreover, it is irrelevant for purposes of the viewpoint discrimination inquiry that COLTS adopted its religious speech ban as part of its effort to avoid “heated debates” on buses. App. 57. No government interest can justify viewpoint discrimination. *Matal*, 137 S. Ct. at 1763 (plurality opinion) (noting that, even in limited public forums, “viewpoint discrimination is forbidden”). This is particularly true when the purported government interest is a general desire to avoid controversy. The fact that certain viewpoints are more controversial than others, and the prospect that the government might block certain viewpoints in order to avoid such controversy, is precisely why this Court has adopted a hardline stance

against viewpoint discrimination. *Id.* (striking down a ban on “offensive” trademarks as viewpoint discriminatory, notwithstanding the fact that the restriction “evenhandedly prohibits disparagement of all groups,” because “[g]iving offense is a viewpoint”); *cf. Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

2. Overtly religious content does not transform religion from a viewpoint into a subject matter.

There is no doubt that atheism is central to Freethought’s advertisement proposal. But this Court has made clear that because religion is, at its core, a viewpoint, discrimination against religious speech does not become justifiable as a subject matter restriction simply because a speaker’s message is highly religious. *See Good News Club*, 533 U.S. at 111 (striking down school facility rental policy that barred “quintessentially religious” instruction, and disputing the notion “that something that is ‘quintessentially religious’ or ‘decidedly religious in nature’ cannot also be characterized properly as the teaching of morals and character development from a particular viewpoint”); *Rosenberger*, 515 U.S. at 823, 831 (invalidating a university’s refusal to fund student publications that “primarily promote[] or manifest[] a particular belie[f] in or about a deity or an ultimate reality,” noting that the policy “does not exclude religion as a subject matter but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints”).

Rather than creating a neutral subject to be regulated, an advertising policy that demands an examination into each proposed ad's level of religiosity would simply add an additional layer of invasive, arbitrary viewpoint discrimination. Under this approach, government actors delegate to themselves the formidable task of "ferret[ing] out views that principally manifest a belief in a divine being" and censoring accordingly. *Rosenberger*, 515 U.S. at 844. Such an approach would require those same actors, and the courts who review their decisions, "to inquire into the significance of words and practices to different religious faiths" and regulate accordingly. *Widmar v. Vincent*, 454 U.S. 263, 270 n.5 (1981). The effect of this review process would be to render religious messages "both incomplete and chilled." *Rosenberger*, 515 U.S. at 844. Indeed, that is precisely what happened here. Freethought's proposal was rejected three times, and was only accepted after it removed all indications of its religious viewpoint and organizational purpose.

Applicant Details

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Applicant Education

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Date of BA/BS	May 2017
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 30, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Harvard Law Review Harvard Civil Rights Civil Liberties Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
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Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Lauren Fukumoto

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February 8, 2022

The Honorable Eric N. Vitaliano
 United States District Court
 Eastern District of New York
 Theodore Roosevelt United States Courthouse
 225 Cadman Plaza East, Room 707 S
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Dear Judge Vitaliano:

I am writing to apply for a clerkship in your chambers for the 2023–2024 term. I am a third-year law student at Harvard Law School and an Executive Editor on the *Harvard Law Review*. I will begin a one-year federal court of appeals clerkship with Judge Amalya Kears on the Second Circuit in September of 2022. Given my continued interest in trial litigation, I would like to follow that experience with a federal district court clerkship.

I have enclosed my resume, law school transcript, undergraduate transcript, and writing sample. The writing sample is an excerpt of a paper written for a constitutional law course. It discusses the legal and technological aspects of monetary design. You will be receiving letters of recommendation from the following individuals:

Professor Christine Desan
 Harvard Law School
 cdesan@law.harvard.edu
 (617) 495-4613

Professor Crystal Yang
 Harvard Law School
 cyang@law.harvard.edu
 (617) 496-4477

Clinical Instructor Mason Kortz
 Harvard Law School
 mkortz@law.harvard.edu
 (858) 922-1990

I would be happy to provide any other information that would be helpful for you. Thank you for your time and consideration.

Sincerely,

Lauren Fukumoto

Lauren Fukumoto

32 Shepard Street, Apartment 42, Cambridge, MA 02138 • LFukumoto@jd22.law.harvard.edu • 626.506.5478

EDUCATION

Harvard Law School

J.D. Candidate

Cambridge, MA

May 2022

Honors: Dean's Scholar Prize in Civil Procedure, Evidence, and Legal Architecture of Globalization

Activities: *Harvard Law Review* (Executive Editor), Teaching Fellow for Legal Architecture of Globalization (Spring 2022), La Alianza, First Class (First Generation and Low-Income Organization), *Harvard Civil Rights – Civil Liberties Law Review*

Columbia College, Columbia University

Bachelor of Arts, Human Rights

New York, NY

September 2013 – May 2017

Honors: Human Rights Departmental Honors

PROFESSIONAL EXPERIENCE

Honorable Amalya Lyle Kears, U.S. Court of Appeals, Second Circuit

Law Clerk

New York, NY

2022 – 2023

Supreme Court Clinic, Harvard Law School

Clinical Student

Cambridge, MA

January 2022

- Drafted the circuit split section of a petition for writ of certiorari to the Supreme Court relating to a False Claims Act case

Munger, Tolles & Olson LLP (return offer extended)

Summer Associate

Los Angeles, CA

May 2021 – July 2021

- Drafted a memo discussing First Amendment and anti-SLAPP applicability for a complaint about streaming service content
- Conducted legal research and edited a reply brief in preparation for a securities litigation oral argument in the Second Circuit
- Prepared a memo regarding potential spoliation claims for a foreign corporation
- Researched criminal procedures for probable cause hearings for immigration-related pro bono litigation

Data Privacy & Security Division, Massachusetts Attorney General

Clinical Student

Cambridge, MA

January 2021 – April 2021

- Drafted document production requests for companies suspected of engaging in Android ID bridging
- Prepared a memo addressing which Massachusetts-based companies may be involved in Android ID bridging and the potential avenues for enforcement of consumer protection laws against identified companies
- Analyzed responsive documents from a CID to determine the scope, timeline, and causes of a data breach affecting Massachusetts residents' personal and health information

Cyberlaw Clinic, Harvard Law School

Clinical Student

Cambridge, MA

September 2020 – December 2020

- Collaborated with a team to draft an amicus brief urging the court to reconsider the use of new probabilistic genotyping technology under New Jersey state law standards
- Conducted research into the use of messenger apps in LGBTQ+ prosecutions in the MENA region
- Drafted a FOIA complaint to the Department of State to compel production of documents requested one year earlier

Covington & Burling LLP (return offer extended)

IL LCLD Scholar

Washington, D.C.

June 2020 – July 2020

- Conducted legal research and drafted a memo analyzing avenues for success of a federal habeas petition for a death row appeal
- Created a presentation and memo documenting international and domestic developments in AI ethics and governance
- Prepared a draft presentation explaining the new standard for joint infringement in patent law after a recent D.C. Circuit decision

Covington & Burling LLP

SEO Law Fellow

San Francisco, CA

May 2019 – July 2019

- Drafted a 10-page research memo summarizing and organizing news articles to be used as exhibits in court for a pro bono case
- Extracted and organized facts from court briefs, opinions, and depositions for several antitrust investigations and pro bono matters

American International Group, Inc. (AIG)

Business Operations and Strategy Technology Analyst

San Francisco, CA

July 2017 – May 2019

- Updated code for the IT Support chatbot application to create additional functionality through error handling
- Restructured documents and templates for the Robotics Process Automation Program to meet regulatory and audit standards
- Orchestrated training and developed training materials for 6 IT productivity applications in 13 offices across the US and Asia

Harvard Law School

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Record of: Lauren Ryoko Fukumoto
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program				2452	Constitutional Law: Money and the Making of American Capitalism	H	3
Fall 2019 Term: August 27 - December 18					Desan, Christine		
1000	Civil Procedure 7	H*	4	8004	Cyberlaw Clinic	H	4
	Spencer, Benjamin				Bavitz, Christopher		
	* Dean's Scholar Prize			2674	Cyberlaw Clinic Seminar	H	2
1001	Contracts 7	H	4	2079	Bavitz, Christopher		
	Rakoff, Todd				Evidence	H*	3
1006	First Year Legal Research and Writing 7B	H	2		Clary, Richard		
	Elinson, Gregory				* Dean's Scholar Prize		
1003	Legislation and Regulation 7	H	4				Fall 2020 Total Credits: 12
	Davies, Susan						
1004	Property 7	H	4				Winter 2021 Term: January 01 - January 22
	Smith, Henry			2426	Appellate Courts and Advocacy Workshop	P	2
					Wolfman, Brian		
	Fall 2019 Total Credits: 18						Winter 2021 Total Credits: 2
Winter 2020 Term: January 06 - January 24							
1052	Lawyering for Justice in the United States	CR	3	2048	Corporations	H	4
	Gregory, Michael				Hanson, Jon		
				8099	Independent Clinical - Massachusetts Attorney General: Data Privacy and Security Division	CR	3
	Winter 2020 Total Credits: 3				Kortz, Mason		
Spring 2020 Term: January 27 - May 15							
Due to the serious and unanticipated disruptions associated with the outbreak of the COVID19 health crisis, all spring 2020 HLS academic offerings were graded on a mandatory CR/F (Credit/Fail) basis.				2896	Legal Architecture of Globalization: Money, Debt, and Development	H*	4
					Desan, Christine		
2651	Civil Rights Litigation	CR	3	7008W	* Dean's Scholar Prize		
	Michelman, Scott				Writing in Conjunction with Appellate Courts and Advocacy Workshop	P	1
1024	Constitutional Law 7	CR	4		Wolfman, Brian		
	Fallon, Richard						Spring 2021 Total Credits: 12
1002	Criminal Law 7	CR	4				Total 2020-2021 Credits: 26
	Yang, Crystal						
1006	First Year Legal Research and Writing 7B	CR	2				Fall 2021 Term: September 01 - December 03
	Elinson, Gregory			2014	Business and Human Rights Clinical Seminar	H	2
1005	Torts 7	CR	4		Giannini, Tyler		
	Gersen, Jacob			2086	Federal Courts and the Federal System	P	5
					Field, Martha		
	Spring 2020 Total Credits: 17			8021	International Human Rights Clinic	H	4
	Total 2019-2020 Credits: 38				Farbstein, Susan		
Fall 2020 Term: September 01 - December 31							Fall 2021 Total Credits: 11

continued on next page


Assistant Dean and Registrar

Harvard Law School

Record of: Lauren Ryoko Fukumoto

Date of Issue: January 26, 2022
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Fall-Spring 2021 Term: September 01 - April 22			
3028	Money Design and Inequality Desan, Christine	~	2
Fall-Spring 2021 Total Credits:			2
Winter 2022 Term: January 04 - January 21			
2233	Supreme Court Litigation Goldstein, Thomas	~	1
8030	Supreme Court Litigation Clinic Goldstein, Thomas	~	2
Winter 2022 Total Credits:			3
Spring 2022 Term: February 01 - April 22			
2000	Administrative Law Beermann, Jack	~	3
2169	Legal Profession: Public Interest Lawyering Wacks, Jamie	~	3
2051	Race and the Law Jenkins, Alan	~	4
Spring 2022 Total Credits:			10
Total 2021-2022 Credits:			26
Total JD Program Credits:			90
End of official record			


Assistant Dean and Registrar

HARVARD LAW SCHOOL
 Office of the Registrar
 1585 Massachusetts Avenue
 Cambridge, Massachusetts 02138
 (617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


 Assistant Dean and Registrar



COLUMBIA UNIVERSITY OFFICIAL TRANSCRIPT

THIS OFFICIAL TRANSCRIPT HAS BEEN TRANSMITTED ELECTRONICALLY AND IS INTENDED SOLELY FOR THE RECIPIENT'S USE.

Recipient:

Lauren Fukumoto

fukumoto.lauren@gmail.com

Student:

Lauren Ryoko Fukumoto

lrf2133@columbia.edu

Statement of Authenticity

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OFFICE OF THE UNIVERSITY REGISTRAR

1140 Amsterdam Avenue 205 Kent Hall, Mail Code 9202 New York, New York 10027 (212) 854-4400

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Lauren Ryoko Fukumoto
 SSN#: XXX-XX-3219
 SCHOOL: COLUMBIA COLLEGE

DEGREE(S) AWARDED: Bachelor of Arts
 DATE AWARDED: May 17, 2017

MAJOR: HUMAN RIGHTS

PROGRAM TITLE: HUMAN RIGHTS

SUBJECT COURSE TITLE NUMBER	POINTS	GRADE	SUBJECT COURSE TITLE NUMBER	POINTS	GRADE
Fall 2013			Fall 2015		
CSER W 1010 INTRO TO COMP ETHNIC STUD	4.00	A-	CSER W 3928 COLONIZATION/DECOLONIZAT	4.00	A
CSER W 1014 INTRO-COMP ETHIC STUDIES	0.00		HRTS V 3190 INT'L HUMAN RIGHTS LAW	3.00	A
HUMA C 1001 EURPN LIT-PHILOS MASTERPI	4.00	A	HUMA W 1121 MASTERPIECES OF WESTERN A	3.00	A-
LATN V 1101 ELEMENTARY LATIN I	4.00	A	PHIL V 3752 PHILOSOPHY OF LAW	3.00	A-
SCNC C 1000 FRONTIERS OF SCIENCE	4.00	A-	HONORS: DEAN'S LIST		
SCNC C 1100 FRONTIERS OF SCIENCE-DISC	0.00		Spring 2016		
HONORS: DEAN'S LIST			STAB C 0002 FULL-TIME STUDY ABROAD PR	15.50	
Spring 2014			Fall 2016		
ENGL C 1014 UNIVERSITY WRITING:HUM RI	3.00	A	COMS W 1002 COMPUTING IN CONTEXT	4.00	A
HUMA C 1002 EURPN LIT-PHILOS MASTRPIE	4.00	B+	COMS W 1012 COMPUTING IN CONTEXT REC	0.00	
LATN V 1102 ELEMENTARY LATIN II	4.00	B+	ECON UN 1105 PRINCIPLES OF ECONOMICS	4.00	A-
MATH V 1201 CALCULUS III	3.00	B+	ECON UN 1155 PRINCIPLES OF ECON - DISC	0.00	
PHED C 1002 PHYSICAL ED: STRENGTH TRA	1.00	P	HRTS UN 3995 HUMAN RIGHTS SENIOR SEMIN	4.00	B+
SOCI W 1000 THE SOCIAL WORLD	3.00	A-	POLS UN 3921 POLITICS OF INCOME INEQUA	4.00	A
Fall 2014			HONORS: DEAN'S LIST		
COCI C 1101 CONTEMP WESTERN CIVILIZAT	4.00	A-	Spring 2017		
HRTS V 3001 INTRODUCTION TO HUMAN RIG	3.00	A-	COMS W 1004 INTRO-COMPUT SCI/PROG JAV	3.00	A
LATN V 1201 INTERMEDIATE LATIN I	4.00	A	ECON UN 3213 INTERMEDIATE MACROECONOMI	4.00	A
POLS V 1013 POLITICAL THEORY I	3.00	A	ECON W 3214 INTER MACROECONOMICS-DISC	0.00	
POLS V 1015 POLITICAL THEORY I - REC	0.00		HRTS UN 3996 HUMAN RIGHTS THESIS SEM	3.00	A-
POLS W 3285 FREEDOM OF SPEECH & PRESS	3.00	A	PHED UN 1002 PHYSICAL ED: CARDIO FITNE	1.00	P
HONORS: DEAN'S LIST			PSYC UN 1001 THE SCIENCE OF PSYCHOLOGY	3.00	A
Spring 2015			HONORS: DEAN'S LIST		
COCI C 1102 CONTEMP WESTRN CIVILIZATI	4.00	A-	REMARKS		
HUMA W 1123 MASTERPIECES OF WESTERN M	3.00	A	Cumulative GPA: 3.796		
LATN V 1202 INTERMEDIATE LATIN II	4.00	A	15.00 Credits Transferred from College Bd: Advanced Placement		
POLS W 3245 RACE-ETHNICITY IN AMERCN	3.00	A	16.00 Credits Transferred from School for Int'l Training		
HONORS: DEAN'S LIST					

This official transcript was produced on
 JANUARY 11, 2019.



SEAL OF COLUMBIA UNIVERSITY
 IN THE CITY OF NEW YORK

Barry S. Kane

Barry S. Kane
 Associate Vice President and University Registrar

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OFFICE OF THE UNIVERSITY REGISTRAR
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205 KENT HALL, MAIL CODE 9202
NEW YORK, NEW YORK 10027
(212) 854-4400



SEAL OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session
A, B, C, D, F (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of **P** (pass) and **HP** (high pass) are used in some schools. The grade of **D** is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

American Language Program, Center for Psychoanalytic Training and Research, Journalism

P (pass), **F** (failing). Grades of **A, B, C, D, P** (pass), **F** (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

Architecture

HP (high pass), **P** (pass), **LP** (low pass), **F** (failing), and **A, B, C, D, F** — used June 1991 and thereafter **P** (pass), **F** (failing) — used prior to June 1991.

Arts

P (pass), **LP** (low pass), **F** (fail). **H** (honors) used prior to June 2015.

Business

H (honors), **HP** (high pass), **P1** (pass), **LP** (low pass), **P** (unweighted pass), **F** (failing); plus (+) and minus (-) used for **H**, **HP** and **P1** grades Summer 2010 and thereafter.

College of Physicians and Surgeons

H (honors), **HP** (high pass), **P** (pass), **F** (failing).

College of Dental Medicine

H (honors), **P** (pass), **F** (failing).

Law

A through **C** [plus (+) and minus (-) with **A** and **B** only], **CR** (credit - equivalent to passing), **F** (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by **HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing). **W** (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.
E (excellent), **VG** (very good), **G** (good), **P** (pass), **U** (unsatisfactory), **CR** (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format — i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

Public Health

A, B, C, D, F - used Summer 1985 and thereafter. **H** (honors), **P** (pass), **F** (failing) — used prior to Summer 1985.

Social Work

E (excellent), **VG** (very good), **G** (good), **MP** (minimum pass), **F** (failing).

A through **C** is used beginning with the class which entered Fall 1997. Plus signs used with **B** and **C** only, while minus signs are used with all letter grades. The grade of **P** (pass) is given only for select classes.

OTHER GRADES USED IN THE UNIVERSITY

AB = Excused absence from final examination.

AR = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

AU = Audit (auditing division only).

CP = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

F* = Course dropped unofficially.

IN = Work Incomplete.

MU = Make-Up. Student has the privilege of taking a second final examination.

R = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

R = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

R = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

R = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

UW = Unofficial Withdrawal.

UW = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

W = Withdrew from course.

YC = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

OTHER INFORMATION

NOTE: All students who cross-register into other schools of the University are graded in the **A, B, C, D, F** grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of **P** (pass) and **F** (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

% of A Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the **A (A+, A, A-)** range in all classes with at least 12 grades, the mark of **R** excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

KEY TO COURSE LISTINGS

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

The **capital letter** indicates the University school, division, or affiliate offering the course:

A	Graduate School of Architecture, Planning, and Preservation
B	School of Business
BC	Barnard College
C	Columbia College
D	College of Dental Medicine
E	School of Engineering and Applied Science
F	School of General Studies
G	Graduate School of Arts and Sciences
H	Reid Hall (Paris)
J	Graduate School of Journalism
K	School of Library Services/Continuing Education (effective Fall 2002)
L	School of Law
M	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytic Training and Research
N	School of Nursing

O	Other Universities or Affiliates/Auditing
P	School of Public Health
Q	Computer Technology/Applications
R	School of the Arts
S	Summer Session
T	School of Social Work
TA-TZ	Teachers College
U	School of International and Public Affairs
V	Interschool Course
W	Interfaculty Course
Y	Teachers College
Z	American Language Program

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The **first digit** of the course number indicates the level of the course, as follows:

0	Course that cannot be credited toward any degree
1	Undergraduate course
3	Undergraduate course, advanced
4	Graduate course open to qualified undergraduates
5	Graduate course open to qualified undergraduates
6	Graduate course
7	Graduate course
8	Graduate course, advanced
9	Graduate research course or seminar

Note: Level Designations Prior to 1961:

1-99 Undergraduate courses
100-299 Lower division graduate courses
300-999 Upper division graduate courses

The term designations are as follows:
X=Autumn Term, **Y**=Spring Term, **S**=Summer Term
Notations at the end of a term provide documentation of the type of separation from the University.

THE ABOVE INFORMATION REFLECTS GRADING SYSTEMS IN USE SINCE SPRING 1982. THE CUMULATIVE INDEX, IF SHOWN, DOES NOT REFLECT COURSES TAKEN BEFORE SPRING OF 1982. ALL TRANSCRIPTS ISSUED FROM THIS OFFICE ARE OFFICIAL DOCUMENTS. TRANSCRIPTS ARE PRINTED ON TAMPER-PROOF PAPER, ELIMINATING THE NEED FOR SIGNATURES AND STAMPS ON THE BACK OF ENVELOPES. FOR CERTIFICATION PURPOSES, A REPRODUCED COPY OF THIS RECORD SHALL NOT BE VALID. THE HEAT-SENSITIVE STRIP, LOCATED ON THE BOTTOM EDGE OF THE FACE OF THE TRANSCRIPT, WILL CHANGE FROM BLUE TO CLEAR WHEN HEAT OR PRESSURE IS APPLIED. A BLUE SIGNATURE ALSO ACCOMPANIES THE UNIVERSITY SEAL ON THE FACE OF THE TRANSCRIPT.

February 09, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am writing on behalf of Lauren Fukumoto (Harvard Law School Class of 2022), who has applied for a clerkship in your chambers. Lauren is incredibly smart, hardworking, and thoughtful. I think she would be an exceptional addition to your chambers and I recommend her with great enthusiasm and no reservations.

I've had the pleasure of having Lauren in two of my classes. Lauren was in my 1L Reading Group on Algorithms and the Law in Fall 2019 and my Criminal Law class in Spring 2020. I was immediately impressed with Lauren when she joined my reading group, during which we discussed legal and technical challenges to the growing use of algorithms in society. Lauren contributed a great deal to class discussion, often sharing her past experience as a software developer. Her past background led her to have terrific insights about whether technological advances can "fix" or "ameliorate" existing inequality in our society.

I continued to be impressed with Lauren during my Criminal Law Class. I found Lauren to be exceptionally well prepared in class every time I called on her. I was impressed with her ability to analyze complex doctrinal and policy issues, and to do so thoughtfully and carefully. Regardless of the difficulty of the questions I posed, Lauren was able to think remarkably quickly on her feet and articulate her thoughts cogently. Although grades for Criminal Law were credit/fail due to the COVID-19 pandemic, Lauren's exam demonstrated an excellent understanding of doctrine and policy, and her writing was clear and succinct. Indeed, it is clear that Lauren worked very hard throughout the challenging semester. And her grades throughout law school bear testament to her intelligence and work ethic.

From a more personal side, Lauren is also friendly and intellectually curious. From our many discussions outside of class, I have learned that Lauren is deeply passionate about public interest work as it pertains to technology-related law, as shown through her work in the cyberlaw clinic and the Massachusetts Attorney General's office.

Based on these observations, I am confident that Lauren will be an excellent addition to chambers. She is bright, professional, mature, and eager to learn. I have no doubt that she will get along with everyone in your chambers. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Crystal S. Yang

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February 08, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano,

I am writing in support of Lauren Fukumoto's application for the position of law clerk in your chambers. Lauren participated in the Cyberlaw Clinic in the Fall of 2020 at Harvard Law School. As Lauren's direct supervisor, I worked closely with her on multiple projects. As such, I had the opportunity to observe Lauren's lawyering firsthand. She excelled in her time at the Clinic, as she would no doubt excel as your clerk.

Lauren worked on a variety of cases and projects during her time at the Clinic, including an amicus brief in the New Jersey Court of Appeals regarding the admissibility of novel DNA evidence, a complaint in a Freedom of Information Act case in the District of Massachusetts, and client advising on the interaction between corporate responsibility and user safety for social media tools.

Lauren displayed very strong research and analysis skills throughout her time at the Clinic. For example, in the amicus brief, Lauren became our expert in New Jersey courts unique application of the Frye and Daubert standards. Despite a lack of on-point decisions, she used the available caselaw to highlight that courts had traditionally used a high degree of rigor when reviewing novel evidentiary technologies. In doing so, she demonstrated the ability to analyze multiple cases with disparate facts and extract general rules. Lauren is also an excellent writer, capable of producing detailed descriptions of facts and law or high-level overviews of legal trends as the situation warrants.

Lauren also exhibited a high degree of professionalism during her time at the clinic. The brief mentioned above was on a very tight timetable, and we were representing an institutional client that had never appeared as amicus before. Lauren did a great job of walking the client through the facts, law, and process, while also keeping the project moving at all times. When the brief was with her supervisors or clients for review, she used her time to prepare for her other projects, including the FOIA litigation we filed at the end of the term. In addition to her excellent time and project management skills, Lauren was a great team player. She was well prepared for team, supervisor, and client meetings and always came prepared with insightful questions and suggestions.

As a former Federal District Court law clerk myself, I have some sense of the skills required to thrive in chambers. I can say without exaggeration that Lauren demonstrated all of these skills during her time with the Cyberlaw Clinic. She is well-versed in technical skills such as research, analysis, and writing as well as professional skills such as time management and communication. Perhaps most importantly, she displayed true pride in her work and a strong motivation to provide the best work product possible.

In short, I believe that Lauren would be an excellent addition to your chambers. Please do not hesitate to contact me if you have any questions about her time at the Cyberlaw Clinic.

Sincerely,

Mason A. Kortz
Clinical Instructor
Harvard Cyberlaw Clinic

Mason Kortz - mkortz@law.harvard.edu

February 11, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I write to give my highest recommendation to Lauren Fukumoto as a law clerk. I have taught Lauren in two classes. Both were difficult classes that combined legal doctrinal analysis with detailed exploration of the historical record and a deep dive into the mechanics of finance. In addition, I required extensive participation in each case. Lauren's work was so good that I have asked her to act as a teaching fellow this year. I therefore came to know Lauren very well.

Lauren was simply outstanding in each class. I will preface my praise by noting that I am not alone in my evaluation: her transcript is a virtually unbroken set of top marks, including at least three Dean's Scholar's prizes and counting. Lauren accomplished all that while putting in many hours on the Harvard Law Review, not an easy lift but one that increases her experience and skills in ways directly applicable to clerking.

In the fall, 2020, Lauren took my class, Constitutional Law: Money and the Making of American Capitalism. Her participation was, from the first, beautifully informed, lucid, and effective. Lauren would later tell me that the area was new for her, far outside her comfort zone. In fact, she mastered the area easily. By November, Lauren was in position to teach a class module. With two other students, she curated a set of materials, structured the class, and created a presentation on Robinhood – a subject she and her co-teachers presciently picked. Robinhood, as you will remember, is the popular trading app that was at the heart of the GameStop stock run. The teaching cameo was one of the best I have ever seen, either by students or by experienced professionals.

Lauren closed out the course with a superb research paper that framed a novel topic: she wanted to investigate the way societies enhance their currencies with both security features – but also with surveillance capacity. As Lauren argued, over the past two centuries, the balance has moved from security to surveillance. Consider, for example, the anti-counterfeiting measures like signatures and watermarks that paper money carries; those measures remain but today's money is pervasively tracked, whether by bank deposit records or credit card accounts. That movement invades the privacy of ordinary users but, more destructively yet, harms marginalized populations most directly. They are excluded from important networks of information while relegated to under-regulated payday industries that track poor users and extract high fees for financial services. I have encouraged Lauren to develop the paper for publication.

In the spring of 2021, Lauren took a second course with me. Again, the course introduced much new material, including the development of the international monetary system and its dynamics. Again, Lauren was exceptional in her insights throughout the class. She wrote an exam that put her at the very top of the class, confirming my high opinion of her abilities.

This spring, I tapped Lauren to join me as a teaching assistant for the class on the international monetary system. She has performed beautifully in the role so far, supporting the class with insight and care. Her work is so good that I will surely assign her a number of teaching cameos in the weeks to come.

Lauren aims to become a civil rights litigator. She would benefit enormously towards that end in learning from you about the way you judge arguments and determine cases. As she did, she would bring you terrific talents as an extraordinary law clerk. I recommend her with great enthusiasm.

Sincerely,

Christine Desan
Leo Gottlieb Professor of Law
617-495-4613

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Lauren Fukumoto

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WRITING SAMPLE

Drafted Fall 2020

The attached is an excerpt from a 30-page final paper in conjunction with the course Constitutional Law: Money and the Making of American Capitalism. An initial outline was submitted to the course professor to ensure sufficient connection with the course themes. No subsequent outside editing was received or incorporated.

I. Introduction

The current monetary system, supplemented by the rapid increase of financial technology and digitization, has enhanced a complicated foundational aspect of money – money’s function as a surveillance tool within a larger public and private system of surveillance. This “surveillance aspect of money” has become increasingly prevalent through digital transactions, that track not only the parties participating in a transaction, the date of the transaction, and the amount, but more intricate details like the items purchased, the method of payment, the location of the consumer, and identification information about the consumer.¹ While some of these data points may be crucial to assessing the security and integrity of the payment itself, many others are recorded simply to aggregate data about transaction and consumption patterns and to package that data for predictive analysis.

When thinking about the surveillance aspect of money, many scholars² have emphasized the privacy concerns that are implicated by mass amounts of data being fed to both public and private actors that monitor payment transactions. While privacy may be a primary concern for consumers within the existing monetary infrastructure, marginalized groups (like those who are unbanked or underbanked because of the existing monetary system³) are penalized *for* not and *while* not engaging in this structure. Thus, a critical analysis of money’s surveillance structure should also address the way the monetary system, through the use of surveillance data, has

¹ See Adam J. Levitin, *Pandora's Digital Box: The Promise and Perils of Digital Wallets*, 166 U. PA. L. REV. 305, 342 (2018) (noting that digital wallet can collect data on an individual's purchasing habits, geolocation, and past web browsing).

² See, e.g., SHOSHANA ZUBOFF, *THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER* (2019) (coining the term “surveillance capitalism” as the effect of aggregating transactional data patterns of consumers); Brett Scott, *Cash in the Era of the Digital Payments Panopticon*, in *MONEYLAB READER 2: OVERCOMING THE HYPE* 147 (2018) (arguing that a cashless society will create a “panopticon” fed by financial surveillance).

³ See Emily Guy Birken, *The Costs of Being Unbanked or Underbanked*, FORBES (July 28, 2020, 12:03 AM), <https://www.forbes.com/advisor/banking/costs-of-being-unbanked-or-underbanked>.

excluded or penalized marginalized groups within the existing monetary infrastructure.

Furthermore, those proposing alternatives to the existing system should consider the effects on marginalized populations who are most tangibly endangered by the system, and should ensure that their proposed solutions do not push marginalized populations further into the fringes of the economy.

This paper attempts to begin that work. First, in scoping out the surveillance aspect of money, a close analysis of the change in data collection over time reveals that information in early monetary design was focused on security. Early money had the primary focus of collecting data and inputting data onto its medium for the purpose of guarding against fraud and counterfeiting. This “security aspect of money” is inherent to money’s function as a store of value and continues to be a facet of digital money today. However, as credit, card payments, and digital forms of money progressed, additional data became valuable beyond its ability to secure the validity of the payment itself. In credit, identification data linked with recordkeeping of an individual’s purchases became important to ensuring that debtors were credit worthy and would be able to be located and forced to pay. In modern digital payments, metadata about money usage, purchasing history and frequency has enabled (1) the government to use this data for policing purposes and (2) private actors to analyze this data for predictive analysis and marketing. This non-security-based surveillance data has increased the value of money and transactions as sites of public and private surveillance.

Using the distinction between security data and surveillance data, the paper switches focus to the marginalized populations that are most affected by this enhanced surveillance aspect of money. Specifically looking at undocumented workers, and low-income individuals who are unbanked or underbanked, the collection of surveillance data by financial institutions has led to

some marginalized populations being effectively locked out of the benefits of the modern monetary system. This phenomenon reveals how the financial system is another site of the “hypervisibility and invisibility”⁴ duality that marginalized people face in the current surveillance economy. Finally, with these issues in mind, the paper analyzes how popular solutions to the monetary surveillance system neglect to address the needs of these marginalized populations. It then proposes new ways of thinking about the current monetary system based on the security-versus-surveillance distinction in the collection of modern transactional data in hopes of finding concrete ways to address the unique needs of marginalized populations in the age of digital money.

II. Money and Surveillance: Across Time and Medium

[Edited]

III. Marginalized Populations and Economic Surveillance

In order to develop adequate solutions or safeguards to the unfettered exploitation of the surveillance aspect of money, it is first crucial to understand who is most harmed by this system. While much of the existing scholarship around the surveillance aspect of money discusses harms to everyday people within the existing financial structure,⁵ there is little discussion about marginalized populations that either exist completely outside of or on the fringes of the current system. In looking at the financial patterns of these populations, namely undocumented,

⁴ This phrase has been used to discuss many marginalized experiences in feminist theory. But it was more recently used in the financial context by Mary Madden to explain the experience of poverty in the digital age. Mary Madden, Opinion, *The Devastating Consequences of Being Poor in the Digital Age*, N.Y. TIMES (Apr. 25, 2019), <https://www.nytimes.com/2019/04/25/opinion/privacy-poverty.html> (“The poor experience these two extremes—hypervisibility and invisibility—while often lacking the agency or resources to challenge unfair outcomes.”).

⁵ See, e.g., Scott, *supra* note 2 (discussing how a general right to privacy of every citizen is being invaded by the panopticon of financial data); Jack Parkin, *Cashless Payment Is Booming, Thanks to Coronavirus. So Is Financial Surveillance*, THE CONVERSATION (Sept. 9, 2020, 4:06 PM), <https://theconversation.com/cashless-payment-is-booming-thanks-to-coronavirus-so-is-financial-surveillance-145179> (discussing how the coronavirus has increased the prevalence of digital and contactless payments for average customers).

unbanked, and underbanked peoples, it becomes clear that they experience what technology researcher Mary Madden has deemed a dual position of “hypervisibility and invisibility.”⁶ In exploring this duality and highlighting examples of this unique experience in the existing financial structure, one can begin to understand how a complete rejection of surveillance technology and the surveillance aspect of money is not a viable solution for these populations. Thus, this understanding helps to structure a new lens with which to analyze potential solutions to the problem of overwhelming surveillance data within the existing monetary structure.

The term “hypervisibility and invisibility” was utilized by Mary Madden based on the 2018 article *The Surveillance Gap: The Harms of Extreme Privacy and Data Marginalization* by law professors Michele Gilman and Rebecca Green.⁷ In the article, Gilman and Green analyze the ways in which “having too much privacy can be as injurious as having too little”⁸ for marginalized populations—namely “undocumented immigrants, day laborers, homeless persons, and people with felony conviction histories.”⁹ They argue that existing outside of the surveillance system, detailed in Part II, can have tangible harms including not being able to access the benefits of the system and not being able to effect the system itself, thus leading to perpetual exclusion.¹⁰ Furthermore, Gilman and Green highlight that if members of these populations gain access to the system, they then often experience hypervisibility, in the form of increased monitoring in comparison to existing members of the system.¹¹

⁶ Madden, *supra* note 4.

⁷ Michele Gilman & Rebecca Green, *The Surveillance Gap: The Harms of Extreme Privacy and Data Marginalization*, 42 N.Y.U. REV. L. & SOC. CHANGE 253 (2018).

⁸ *Id.* at 253.

⁹ *Id.* at 255.

¹⁰ *See id.* at 260. Gilman & Green note that the U.S. Census provides a prime example of the harms of being locked out of the system. In this example, undocumented people do not to participate in the census for fear of having their information, especially their whereabouts, reported to ICE, thus “undercounting” this population and leaving them with less political, social, and economic resources based on resource allocation from the results of the census. *Id.* at 267-68.

¹¹ *See id.* at 257, 260.

This phenomenon is exemplified throughout the current monetary-surveillance system. For example, in the case of undocumented workers, immigration law professor Stephen Lee notes that “a lack of a conventional paper trail or pay stub system linking workers to employers exposes these workers to potential wage theft and dangerous working conditions.”¹² Thus, undocumented workers lose access to the protective benefits of the surveillance aspect of money through a paper trail since they are unable to use data about payment transactions to enforce their rights as workers. However, turning to the hypervisibility angle, these same undocumented workers are largely pushed to the fringes of the employment structure because they are constantly monitored for removal by the federal government.¹³ Therefore, their inability to access the benefits of transactional surveillance data is a byproduct of their marginalization, and any solutions to the situation should address that reality.

In looking to other examples of invisibility within the existing monetary system, unbanked and underbanked peoples do not or cannot use digital payments because of the prerequisite of a banking or credit account. For unbanked individuals, cash is the dominant form of payment.¹⁴ Although cash increases privacy because it does not connect consumer’s identity to itself as a medium, for the same reason, it is difficult to retrieve legally if stolen. Therefore, cash, because of its lack of surveillance-data linking the identity of the holder to the value, can be almost impossible to recover if stolen. Therefore, the unbanked are locked out of utilizing the benefits of the surveillance-data of other forms of money because those forms require connections to a banking institution.

¹² See *id.* at 254 (citing Stephen Lee, *Policing Wage Theft in the Day Market*, 4 U.C. IRVINE L. REV. 655, 655-56 (2014)).

¹³ See Lee, *supra* note 49 at 657 (questioning whether criminal prosecutions can mitigate wage theft for “unauthorized immigrant workers whose very presence in the United States renders them removable”).

¹⁴ Lucas Downey, *Unbanked*, INVESTOPEDIA (Nov. 23, 2020), <https://www.investopedia.com/terms/u/unbanked.asp#:~:text=Underbanked%20is%20a%20related%20term,%2C%20credit%20cards%2C%20and%20loans.>

Furthermore, for underbanked individuals, although they may have a bank account and thus can utilize digital payments, they tend not to have credit-based accounts or credit cards.¹⁵ While the difference in payment method may not seem important on its face, the difference in liability a consumer may face can have a large impact on an underbanked individual. Regulation E allows debit-card users to be liable for \$50 worth of unauthorized charges if they report errors or theft within two days.¹⁶ The liability then jumps to a \$500 maximum if reported within sixty days, and unlimited liability after that.¹⁷ Conversely, under the Fair Credit Billing Act, credit card holders are subject to a \$50 maximum liability if the card holder has taken “such steps as may be reasonably required in the ordinary course of business” to notify the card issuer.¹⁸ Furthermore, many credit card issuers offer no liability for unauthorized charges as a feature of their card services.¹⁹ This key difference in potential liability is crucial for underbanked populations who cite not having enough money to bank as a primary barrier to full banking.²⁰ Thus, if an underbanked individual experiences card theft, their liability could push them into being unbanked, and further into the fringes of invisibility in the monetary system.

A separate but perhaps equally detrimental consequence is that this invisibility of being unbanked or underbanked in a financial system based on the centrality of commercial banking is often self-reinforcing. For example, although credit exposes users to more surveillance as discussed in the previous Part, access to the benefit of less liability through credit usage is inaccessible to those without surveillance-data of the monetary system like employment stubs

¹⁵ *See id.*

¹⁶ 12 C.F.R. § 1005.6(b)(1) (2020).

¹⁷ *Id.* § 1005.6(b)(2)-(3).

¹⁸ 15 U.S.C. § 1643(a) (2020).

¹⁹ *See* Lindsay Konsko, *Which Credit Card Issuers Offer Zero Fraud Liability?*, NERDWALLET (Oct. 30, 2017), <https://www.nerdwallet.com/article/credit-cards/credit-card-issuers-0-fraud-liability#:~:text=According%20to%20the%20federal%20Fair,made%2C%20you%20have%20no%20liability.>

²⁰ *See* Erin Barry, *25% of US Households Are Either Unbanked or Underbanked*, CNBC (Mar. 9, 2019, 11:01 AM), <https://www.cnbc.com/2019/03/08/25percent-of-us-households-are-either-unbanked-or-underbanked.html>.

and proof of additional funds to assess credit worthiness. Therefore, unbanked peoples, due to their tendency to exist on the fringes of the monetary surveillance system, are not able to generate the type of paper trail that banks use to determine credit worthiness. This echoes the previously discussed experiences of undocumented individuals who are not able to use paper trails to enforce their rights as workers.

Additionally, invisibility leads to an inability to change the system. As Gilman and Green note “those who fall within the surveillance gap are not included within big data streams that ultimately shape public policy, thus leaving out their experiences and needs from the calculus that goes into creating policy.”²¹ This can be seen within the financial system in the form of banking policies for extending credit. As credit predictions become increasingly influenced by financial data looking at predictive patterns,²² those without data points can be locked out of the system. Furthermore, as those individuals usually represent marginalized populations that are similarly locked out of the system, the phenomenon creates what big data expert Kate Crawford has noted as “signal problems” in big-data sets — “dark zones or shadows where some citizens and communities are overlooked or underrepresented.”²³ Therefore, not contributing information to the multitude of existing financial surveillance data can harm marginalized populations because it enables the creations of algorithms and predictive patterns that continue to exclude those populations, perpetuating existing inequalities within the system. While it is debatable whether entering the system can provide adequate solutions to this problem given the

²¹ Gilman & Green, *supra* note 44, at 255.

²² See generally Mikella Hurley & Julius Adebayo, *Credit Scoring in the Era of Big Data*, 18 YALE J. L. & TECH. 148 (2016); see also BECKY CHAO ET. AL, NEW AMERICA, CENTERING CIVIL RIGHTS IN THE PRIVACY DEBATE 16 (Sept. 17, 2019, 11:28 AM), <https://www.newamerica.org/oti/reports/centering-civil-rights-privacy-debate/>.

²³ Kate Crawford, *Think Again: Big Data: Why the Rise of Machines Isn't All It's Cracked Up to Be*, FOREIGN POL'Y (May 10, 2013), <http://foreignpolicy.com/2013/05/10/think-again-bigdata/>.

discrimination that has existed and continues to exist in the banking industry,²⁴ the signal problem points out that there is also harm done when consumers cannot or do not participate in this process.

Turning to examples of hypervisibility for marginalized populations in the financial system, low-income individuals who use welfare services are highly surveilled by the federal government. Beginning in the New Deal Era, welfare services were heavily policed as part of the narrative of checking the “undeserving poor.”²⁵ This rhetoric continues to this day, and manifests itself in drug tests, DNA testing of children, fingerprinting, and intrusive questioning about intimate relationships for single-mother welfare recipients.²⁶

Furthermore, this egregious level of surveillance has been sanctioned by the judiciary, which held in *Wyman v. James* that allowing government workers to search the homes of welfare recipients to assess compliance with welfare requirements did not violate the Fourth or Fourteenth Amendments.²⁷ In *Wyman*, the Court reasoned that the federal government has an interest in “seeing and assuring that the intended and proper objects of that tax produced assistance are the ones who benefit from the aid it dispenses.”²⁸ However, in looking at the Constitution, while Article I gives Congress the power to lay and collect taxes and spend for the

²⁴ See, e.g., Terry Gross, *A ‘Forgotten History’ of How the U.S. Government Segregated America*, NPR (May 3, 2017, 12:47 PM), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> (discussing historic practices by the federal government to segregate black families from federal housing); Michael Powell, *Bank Accused of Pushing Mortgage Deals on Blacks*, N.Y. TIMES (June 6, 2009), <https://www.nytimes.com/2009/06/07/us/07baltimore.html> (describing how Wells Fargo “singl[ed] out blacks in Baltimore and suburban Maryland for high-interest subprime mortgages.”).

²⁵ See Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER, SOC. POL’Y & L. 247, 257-58 (2014).

²⁶ See Mary Madden et. al, *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 WASH. U. L. REV. 53, 59 (2017) (citing Kaaryn S. Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, U.C. IRVINE L. REV. 297, 312-321 (2013)).

²⁷ See *Wyman v. James*, 400 U.S. 309 (1971).

²⁸ *Id.* at 319.

general welfare²⁹, it also gives Congress the power to coin money³⁰ and essentially generate cash. When the Supreme Court connects the powers of Congress to their authority for surveillance of a monetary device in *Wyman*, it leaves open the question of whether this line of logic can also apply to the U.S. dollar. While the reasoning behind surveilling cash in the same way may be dubious, the Supreme Court's silence on that issue highlights the theme of hypervisibility for marginalized people – they are surveilled to a higher extent within an existing system. While some may argue that welfare is qualitatively different than cash, and thus should be surveilled for compliance, it is notable that other forms of federal government-backed economic programs like mortgage loans from the Fair Housing Act do not submit recipients to the same level of surveillance.³¹

These examples of invisibility and hypervisibility experienced by marginalized populations within the financial system make the case that a full-scale rejection of the existing surveillance aspect of money is not a viable solution for these populations. Additionally, the examples suggest that if marginalized populations were to enter, or wade further into, the existing system, they would experience a higher level of surveillance than the average consumer. Therefore, keeping these tangible harms in mind, the next Part turns to a discussion of the potential solutions available to address the oversurveillance tendencies that the contemporary monetary system generates.

III. Rethinking Solutions to Surveillance

Proposed solutions to the widespread surveillance data and surveillance technology within the modern monetary system have varied. Looking at intrusion of everyday privacy as the

²⁹ U.S. CONST. art. I, § 8.

³⁰ *Id.*

³¹ See Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L. F. 1, 24 (2008).

primary harm, many have suggested either returns to cash³² or utilizing a decentralized money like Bitcoin³³ as ways to circumvent the existing surveillance system. However, the previous Part has revealed how invisibility within the system can have its own detrimental effects for marginalized populations. Therefore, this Part will first analyze how these two proposed solutions, cash and Bitcoin, would affect some marginalized populations. It will then use that analysis as a starting point to reframe thinking around solutions to surveillance in the existing monetary design. Finally, it will briefly return to the security-versus-surveillance data distinction, discussed in Part II, to analyze whether this observation of the existing monetary design can help guide potential reform in the system to better address the needs of marginalized populations.

[Edited]

³² See, e.g., Scott, *supra* note 2; Sarah Jeong, *How a Cashless Society Could Embolden Big Brother*, THE ATLANTIC (Apr. 8, 2016), <https://www.theatlantic.com/technology/archive/2016/04/cashless-society/477411>.

³³ See, e.g., PETER VAN VALKENBURGH, COIN CENTER, *ELECTRONIC CASH, DECENTRALIZED EXCHANGE, AND THE CONSTITUTION* (Mar. 2019), <https://www.coincenter.org/electronic-cash-decentralized-exchange-and-the-constitution>.

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Applicant Education

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Date of BA/BS	May 2012
JD/LLB From	The George Washington University Law School
	https://www.law.gwu.edu/
Date of JD/LLB	May 15, 2022
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	The George Washington Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
--------------------------------------	------------

Post-graduate Judicial Law Clerk **Yes**

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Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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January 19, 2021

The Honorable Eric N. Vitaliano
U.S. Court of Appeals for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Dear Judge Vitaliano:

I am a rising third-year law student at The George Washington University Law School. I write to express my interest in a 2023–2024 term clerkship in your chambers.

I entered law school with the intent of pursuing opportunities to problem-solve through litigation, and have had the honor of interning at two prominent federal courts. Last summer, I interned at the U.S. District Court for the Southern District of New York for Magistrate Judge Robert Lehrburger, where I researched and drafted two opinions and participated in discovery and motions work. I spent the next semester externing at the U.S. Court of Appeals for the D.C. Circuit. I worked directly with Judge Patricia Millett and her clerks to draft and edit opinions, and participated in case discussions for oral arguments. Both judicial internships required me to analyze intricate legal issues that lacked precedent and included multiple parties.

My professional experiences and qualifications—such as quality research and writing, and the ability to dissect complex issues—will be immediately transferrable to your chambers. I currently serve as the first AAPI Editor-in-Chief of *The George Washington Law Review*, and regularly conduct edits on articles and essays for substantiation and Bluebook compliance. Additionally, my experience as a strategic communications professional in New York and abroad have honed my ability to understand and deliver convoluted information on unfamiliar matters and industries.

Please find enclosed my materials and letters of recommendation from Professor Thomas Colby, Professor Caprice Roberts, and Judge Russell Canan of the D.C. Superior Court. I look forward to the opportunity to interview with you. Thank you for your time and attention.

Respectfully,

Stephanie Hahn

Soohyun Stephanie Hahn

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EDUCATION

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GPA: 3.957/4.333 (top 1–5% of class, as of Spring 2021)
Journal: The George Washington Law Review, *Editor-in-Chief* (Vol. 90)
Activities: Law, Justice & Int'l Dev. Soc'y, *President*; GW Law Soccer, *Board*; APALSA, *Member*
Awards: Inaugural SAIL Scholar, NAPABA Law Foundation; GW Law Merit Scholar
- Bryn Mawr College**—Bryn Mawr, PA May 2012
Bachelor of Arts, *cum laude* in Growth and Structure of Cities; Minor in Environmental Studies
Activities: Varsity Volleyball NCAA Division III, *Libero*; Bi-Co Korean Student Association, *President*

PROFESSIONAL EXPERIENCE

- U.S. Department of State, Office of the Legal Adviser**—Washington, D.C. Sept. 2021–Nov. 2021
Legal Extern, United Nations Affairs
 - Researched and drafted briefs on prior U.S. policy determinations in precedent cases to assist ongoing ICJ and ICC litigation
 - Analyzed complex foreign policy issues, and drafted recommendations to assist U.N. agencies take informed positions
- Gibson, Dunn & Crutcher LLP**—New York, NY May 2021–July 2021
Summer Associate
 - Assessed internal anticorruption and bribery documents for Korean clients, and partook in proposing a new compliance plan
 - Researched and drafted client alerts, memoranda, and briefs for ongoing cases and international arbitration hearings
- U.S. Court of Appeals, District of Columbia Circuit**—Washington, D.C. Aug. 2020–Nov. 2020
Judicial Extern for the Honorable Patricia A. Millett
 - Researched and wrote memoranda analyzing multifaceted legal issues in pending cases and for oral argument preparation
 - Proofread, substantiated, and cite-checked opinions authored by Judge Millett and her law clerks
- U.S. District Court, Southern District of New York**—New York, NY May 2020–Aug. 2020
Judicial Intern for the Honorable Robert W. Lehrburger
 - Drafted Report & Recommendations for a § 1983 summary judgment claim and a Social Security appeal
 - Participated in discovery hearings, settlement conferences, initial pretrial conferences, and arraignments
- United Nations Development Programme**—Seoul, South Korea Jan. 2019–July 2019
Communications Consultant
 - Advised the Seoul Policy Centre in rebranding its messaging according to UNDP's new corporate strategies, and oversaw successful implementation through knowledge products, including briefs, press releases, articles, and social media content
- USA TODAY NETWORK | Gannett**—New York, NY Feb. 2016–Feb. 2018
Executive Assistant, Marketing Solutions (previously National Sales, Advertising)
 - Acted as a strategic communications partner to the Chief Revenue Officer by building go-to-market deliverables, and liaised with internal management and external clients on projects, including B2B marketing events and leadership summits
- C21PR (Communications Marketing & PR Agency)**—Seoul, South Korea Sept. 2014–May 2015
Communications Consultant (promoted from Communications Associate)
 - Oversaw projects and services for foreign clients, including bilingual marketing, competitor landscaping, and market entry
- Isan Steel**—Ningbo, China July 2013–Sept. 2014
Project Manager
 - Developed strategic deliverables and assisted the outreach and negotiation of sales purchases with multinational clients

COMMUNITY SERVICE

- Bowery Mission Women's Center | Hope for New York, Volunteer**—New York, NY Oct. 2015–June 2018
U.S. Census Bureau, Translation Volunteer—Philadelphia, PA Oct. 2009–April 2010
Compassion International, Volunteer and Sponsor—Remote; Manila, Philippines Jan. 2004–Present

PUBLICATION

- STEPHANIE HAHN, ENVIRONMENTAL RESTORATION OR DEGRADATION?: THE CHEONGGYEcheon STREAM OF SEOUL, SOUTH KOREA (LAP Lambert Acad. Publ'g, 2013).
- S. Stephanie Hahn, Proving Causation for COVID-19 Vaccine Injuries (April 2021) (unpublished Note) (on file with author).

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WASHINGTON, DC 20052

TELEPHONE: 202-994-4900

Official Academic Transcript of:
SOOHYUN STEPHANIE HAHN
Transcript Created: 7-Feb-2022

Requested by:
SOOHYUN STEPHANIE HAHN
950 25TH ST NW
311N
WASHINGTON, DC 20037-2162

E-Mail: sshahn@law.gwu.edu

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THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G46234806
Date of Birth: 06-APR

Date Issued: 07-FEB-2022

Record of: Soohyun Stephanie Hahn

Page: 1

Student Level: Law
Admit Term: Fall 2019

Issued To: SOOHYUN HAHN
950 25TH ST NW
311N
WASHINGTON, DC 20037-2162

REFNUM:67827372

Current College(s):Law School
Current Major(s): Law

SUBJ NO COURSE TITLE CRDT GRD PTS

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2019

Law School
Law

LAW 6202	Contracts Roberts	4.00	A+
LAW 6206	Torts Suter	4.00	A
LAW 6212	Civil Procedure Colby	4.00	A-
LAW 6216	Fundamentals Of Lawyering I Prakash	3.00	A-
Ehrs	15.00 GPA-Hrs	15.00	GPA 3.933
CUM	15.00 GPA-Hrs	15.00	GPA 3.933
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			

Spring 2020

Law School
Law

LAW 6208	Property Overton	4.00	CR
LAW 6209	Legislation And Regulation Schaffner	3.00	CR
LAW 6210	Criminal Law Braman	3.00	CR
LAW 6214	Constitutional Law I Cheh	3.00	CR
LAW 6217	Fundamentals Of Lawyering II Prakash	3.00	CR
Ehrs	16.00 GPA-Hrs	0.00	GPA 0.000
CUM	31.00 GPA-Hrs	15.00	GPA 3.933
Good Standing			

...
DURING THE SPRING 2020 SEMESTER, A GLOBAL PANDEMIC
CAUSED BY COVID-19 RESULTED IN SIGNIFICANT
ACADEMIC DISRUPTION. ALL LAW SCHOOL COURSES FOR
SPRING 2020 SEMESTER WERE GRADED ON A MANDATORY
CREDIT/NO-CREDIT BASIS.

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO COURSE TITLE CRDT GRD PTS

Fall 2020

Law School
Law

LAW 6232	Federal Courts Roberts	3.00	A
LAW 6238	Remedies Roberts	3.00	A+
LAW 6668	Field Placement	3.00	CR
LAW 6669	Judicial Lawyering Canan	2.00	A+
Ehrs	11.00 GPA-Hrs	8.00	GPA 4.208
CUM	42.00 GPA-Hrs	23.00	GPA 4.029
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

Spring 2021

LAW 6380	Constitutional Law II Colby	4.00	A-
LAW 6400	Administrative Law Bignami	3.00	A-
LAW 6511	Anti-Corruption And Compliance Tillipman	2.00	A
LAW 6520	International Law Murphy	4.00	CR
Ehrs	13.00 GPA-Hrs	9.00	GPA 3.741
CUM	55.00 GPA-Hrs	32.00	GPA 3.948
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			

Fall 2021

LAW 6230	Evidence Saltzburg	4.00	A
LAW 6240	Litigation W/ Fed Govt. Axelrad	2.00	CR
LAW 6667	Advanced Field Placement Sulton	0.00	CR
LAW 6668	Field Placement Mccoy	3.00	CR
LAW 6871	U.S. Foreign Relations Law Murphy	3.00	A
Ehrs	12.00 GPA-Hrs	7.00	GPA 4.000
CUM	67.00 GPA-Hrs	39.00	GPA 3.957
Good Standing			

***** CONTINUED ON PAGE 2 *****



Edmundson
University Registrar

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WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G46234806
 Date of Birth: 06-APR

Date Issued: 07-FEB-2022

Record of: Soohyun Stephanie Hahn

Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS

Fall 2020				
Law School				
Law				
LAW 6657	Law Review Note	1.00	-----	
	Credits In Progress:	1.00		
Spring 2021				
LAW 6657	Law Review Note	1.00	-----	
	Credits In Progress:	1.00		
Fall 2021				
LAW 6658	Law Review	1.00	-----	
	Credits In Progress:	1.00		
Spring 2022				
LAW 6218	Professional	2.00	-----	
	Responslbty/Ethic			
LAW 6250	Corporations	4.00	-----	
LAW 6360	Criminal Procedure	4.00	-----	
LAW 6364	White Collar Crime	3.00	-----	
LAW 6658	Law Review	1.00	-----	
	Credits In Progress:	14.00		
***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	67.00	39.00	154.33	3.957
OVERALL	67.00	39.00	154.33	3.957
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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I/ and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt; CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

<http://www.gwu.edu/transcriptkey>

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Bryn Mawr College
Kirsten O'Beirne
101 N. Merion Avenue
Bryn Mawr, PA 19010
Telephone: 610-526-5142
School Web Page: <https://www.brynmawr.edu/>
Accreditation: Middle States Commission on Higher Education (MSCHE)

Student Information

Student Name: Soohyun Stephanie Hahn
Numeric Identifier: 3478563
Birth Date: Not Provided By the Sending School
Student Email: stephanieshahn@gmail.com

Receiver Information

stephanieshahn@gmail.com



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BRYN MAWR COLLEGE

101 N. Merion Ave.
Bryn Mawr, PA 19010-2899

Page 1

Name : Soohyun Stephanie Hahn
Student ID: 3478563
Address : 322 W. 57th St., Apt. 20P
New York, NY 10019
United States

Print Date : 09-18-2017

Degrees / Programs Completed

Degree : Bachelor of Arts

Confer Date : 05-12-2012

Degree Honors : Cum laude

Plan : Growth and Structure of Cities at Bryn Mawr

Plan : Environmental Studies at Bryn Mawr

Academic Program History

Program : Undergraduate Majors (AB)

06-03-2008 : Enrolled

06-03-2008 : Undeclared Major

11-17-2009 : Enrolled

11-17-2009 : Growth & Str of Cities at BM Major

11-17-2009 : Environmental Studies Concentration

02-22-2011 : Enrolled

02-22-2011 : Growth & Str of Cities at BM Major

02-22-2011 : Environmental Studies at BM Minor

02-22-2011 : Education at Bryn Mawr Minor

05-07-2012 : Enrolled

05-07-2012 : Growth & Str of Cities at BM Major

05-07-2012 : Environmental Studies at BM Minor

05-12-2012 : Completed Program

Beginning of Undergraduate Record

Fall 2008

Course	Description	Attempted	Earned	Grade	Points
CITY	B175 Environment and Society	1.00	1.00	3.0	3.000
Course Topic(s): History, Place & Problems					
CSEM	B001 College Seminar	1.00	1.00	3.3	3.300
Course Topic(s): Omnivore's Dilemma					
GEOL	B101 How the Earth Works	1.00	1.00	3.0	3.000
POLS	B131 Intro to Comparative Politics	1.00	1.00	3.0	3.000

----- End Of Column -----

Spring 2009

Course	Description	Attempted	Earned	Grade	Points
ANTH	B102 Intro to Cultural Anthropology	1.00	1.00	3.0	3.000
CITY	B103 Earth Syst Science & Environ	1.00	1.00	3.0	3.000
EAST	B225 Topics in Modern Chinese Lit	1.00	1.00	3.3	3.300
Course Topic(s): Mod China thru Lit, Art & Film					
ICPR	H111B Intro Peace & Conflict Studies	1.00	1.00	3.3	3.300

Fall 2009

Course	Description	Attempted	Earned	Grade	Points
BIOL	B220 Ecology	1.00	1.00	3.3	3.300
CITY	B185 Urban Culture and Society	1.00	1.00	3.7	3.700
CITY	B207 Topics in Urban Studies	1.00	1.00	2.7	2.700
Course Topic(s): Writing Architecture					
EAST	B264 Human Rights in China	1.00	1.00	3.7	3.700

Spring 2010

Course	Description	Attempted	Earned	Grade	Points
ANTH	B206 Conflict Mgmt/Cross-Cultural	1.00	1.00	2.7	2.700
CITY	B190 Form of the City	1.00	1.00	4.0	4.000
CITY	B218 Globalization and the City	1.00	1.00	3.3	3.300
CITY	B266 Schools in American Cities	1.00	1.00	3.3	3.300

Fall 2010

Course	Description	Attempted	Earned	Grade	Points
CITY	B254 History of Modern Architecture	1.00	1.00	3.3	3.300
CITY	B301 Topics in Modern Architecture	1.00	1.00	3.3	3.300
Course Topic(s): The City and the Automobile					
CITY	B335 Mass Media & the City	1.00	1.00	4.0	4.000
KORN	P211 Advanced Korean I	1.00	1.00	4.0	4.000
URBS	P420 Perspect on Urban Poverty	1.00	1.00	3.7	3.700

Spring 2011

Course	Description	Attempted	Earned	Grade	Points
EAST	B362 Environment in Contemp E Asia	1.00	1.00	4.0	4.000
EDUC	B200 Critical Issues in Education	1.00	1.00	3.3	3.300
EDUC	B275 English Learners in the US	1.00	1.00	3.7	3.700
URBS	P205 Power of Place	1.00	1.00	3.7	3.700

----- End Of Column -----

Kirsten O'Beirne, Registrar

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BRYN MAWR COLLEGE

101 N. Merion Ave.
Bryn Mawr, PA 19010-2899

Page 2

Name : Soohyun Stephanie Hahn
Student ID: 3478563
Address : 322 W. 57th St., Apt. 20P
New York, NY 10019
United States

Fall 2011

Course	Description	Attempted	Earned	Grade	Points
CITY	B279 Global Evironmental Change	1.00	1.00	3.7	3.700
CITY	B398 Senior Seminar	1.00	1.00	3.7	3.700
EAST	B352 China's Environment	1.00	1.00	4.0	4.000
ENVS	B397 Sr Seminar Environment Studies	1.00	1.00	3.7	3.700

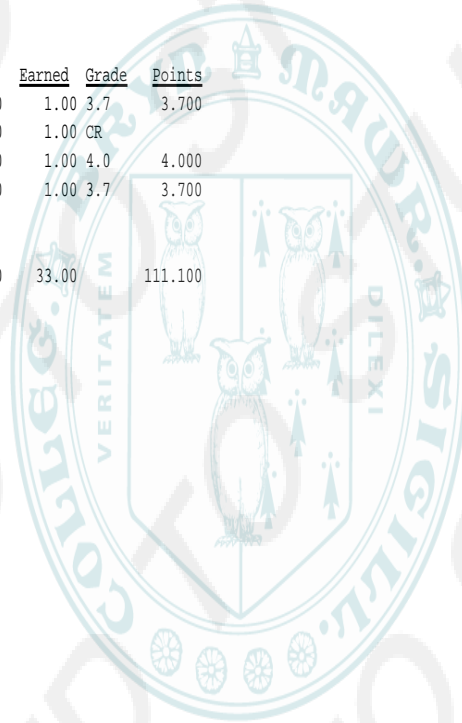
Spring 2012

Course	Description	Attempted	Earned	Grade	Points
CITY	B328 Geographic Info Systems	1.00	1.00	3.7	3.700
GEOL	B209 Natural Hazards & Human Popul	1.00	1.00	CR	
KORN	P212 Advanced Korean II	1.00	1.00	4.0	4.000
URBS	P417 Cities & Sustainability	1.00	1.00	3.7	3.700

Undergraduate Career Totals

CUM GPA : 3.472 CUM TOTALS : 33.00 33.00 111.100

----- End Of Transcript -----



Kirsten O'Beirne, Registrar

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BRYN MAWR COLLEGE

ACCREDITATION

Bryn Mawr College is accredited by the Middle States Association of Colleges and Secondary Schools.

UNDERGRADUATE COLLEGE

Academic Calendar

The academic calendar consists of two semesters lasting 14 weeks long (excluding exam periods and vacations) and one condensed summer semester.

Length of periods: Lecture hour = 50 minutes; Laboratory hour = 60 minutes

Academic Credit & Course Load

One unit is equivalent to four (4) semester hours; a normal course load is 4 units per semester.

Requirements for the A.B. degree: 1982 and later – 32 units or 128 semester hours.

Quaker Consortium

Through the Quaker Consortium courses may be taken for credit at Haverford College, Swarthmore College and the University of Pennsylvania during the academic year. Grades and credits for these courses are included on the student's Bryn Mawr College transcript. The official transcript for all Quaker Consortium courses is maintained by the student's home institution.

Transfer Credits

Transfer credits applied toward the degree are listed on the transcript without grades or specific course information. Transfer work must be at least 2.0 to qualify for transfer credit.

Undergraduate Grading System

Merit: Merit grades range from 4.0 (outstanding) to 2.0 (satisfactory). Courses in which a student earns merit grades can be used to satisfy the major and curricular requirements.

4.0 (A), 3.7 (A-), 3.3 (B+), 3.0 (B), 2.7 (B-), 2.3 (C+), 2.0 (C)

Passing (Below Merit): 1.7 (C-), 1.3 (D+), 1.0 (D)

Failure: 0.0 (F)

Course Classification & Numbering

- 001-199 First year courses, plus intermediate language courses
- 200-299 Second year courses
- 300-399 Advanced undergraduate courses
- 400-499 Special categories: Undergraduate supervised work

GRADUATE SCHOOL OF ARTS AND SCIENCES

Academic Credit & Course Load

Study in the Graduate School of Arts and Sciences is defined in terms of academic units. The full-time course load is 3 academic units of work per semester. One graduate unit = 5 semester hours. Graduate Credit may be given for courses at the 200 and 300 level if the instructor certifies that the student did additional work of graduate caliber. Units taken for undergraduate credit are graded numerically.

Requirement for M.A. degree: minimum of 6 units of work and a research paper (thesis).

Requirement for Ph.D. degree: minimum of 12 units of work, successful completion of required field examinations (Preliminary Examinations), a dissertation, and a successful final examination on the dissertation.

Graduate Grading System

- S = Satisfactory: Equivalent to grade of B (3.0) or better
- U = Unsatisfactory

Course Classification & Numbering

- 500-699 Graduate seminar courses
- 700-799 Graduate research work

GRADUATE SCHOOL OF SOCIAL WORK AND SOCIAL RESEARCH

The Graduate School of Social Work and Social Research is accredited by the Council on Social Work Education.

Course of Study:

Master of Social Service (M.S.S.) degree consists of 18 course units including 4 units of field education. The M.S.S. degree is equivalent in every way to the Master of Social Work (M.S.W.) degree.

Master of Law and Social Policy (M.L.S.P.) degree consists of 7 course units plus a field based special project. Students must either hold a Master's degree in social work or a related field or be enrolled concurrently in the M.S.S. degree program. [Prior to Fall 2004 the M.L.S.P. consisted of 8 course units including one unit of field education.]

Doctor of Philosophy (Ph.D.) degree consists of a minimum of 12 course units beyond the Master's degree, satisfactory performance on preliminary examinations within the student's field of study, a dissertation, and a successful final examination of the dissertation. [Prior to Fall 2004 a minimum of 14 course units were required.]

Academic Credit

- Semester hour equivalent: One masters unit = 4 semester hours
- One Ph.D. unit = 5 semester hours

Continuing Education – One continuing education credit hour is awarded for each hour of instruction. Continuing Education courses are numbered 1000-9999.

Course Classification & Numbering

As of Summer 2013

- 400-499: M.L.S.P. courses
- 500-549: M.S.S. Foundation, Concentration & 2yr fieldwork
- 550-674: M.S.S. Electives
- 675-699: Ph.D. Courses

Prior to Summer 2013

- 100-399: M.S.S. courses
- 400-499: M.L.S.P. courses
- 500-799: Ph.D. courses

Graduate Grading System

- S = Satisfactory: Equivalent to grade of B (3.0) or better
- S- = Marginally Satisfactory: Passing grade, equivalent to a grade of B- (2.7)
- U = Unsatisfactory

CONSORTIAL SCHOOL CODES & OTHER GRADING SYMBOLS

CONSORTIAL SCHOOL CODES (IMMEDIATELY PRECEDING THE CATALOG NUMBER)

A	Institut d'Etudes Francaises d'Avignon	M	Centro de Estudios Hispoanicos en Madrid
B	Bryn Mawr College course	N	Hahnemann University course
D	Drexel University course	P	University of Pennsylvania course
DE	University of Delaware course	PR	Princeton University course
E	American Councils E. Europe Programs	R	American Councils programs
F	Italian Studies Institute in Florence	S	Swarthmore College course
H	Haverford College course	T	Temple University course
I	Summer Study in Pisa	V	Villanova University course

OTHER GRADING SYMBOLS (NOT INCLUDED IN THE CALCULATION OF GRADE POINT AVERAGES)

AUD	= Audit	NC	= No Credit
CE	= Continuing Enrollment	NGR	= No Grade Reported
CIP	= Course in Progress; final grade not assigned	P	= Pass
CP	= Completed	T	= Transfer
CR	= Credit (1.0 and above)	UI	= Unauthorized Incomplete
I	= Incomplete	WD	= Withdrawn
INC	= Permanent Incomplete	WV	= Course Waived

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The George Washington University Law School
2000 H. Street, N.W.
Washington, D.C. 20052

January 19, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I write in enthusiastic support of Soohyun Stephanie Hahn, who has applied to serve as a law clerk in your chambers. Simply put, Stephanie is one of the very top students—if not the top student—at the George Washington University Law School. She is an intellectual star in the making, and she would make a fantastic law clerk.

Stephanie was a student in my Civil Procedure class last year. The class was taught as a “small section” of about 35 students, which allowed me to get to know each student quite well. Stephanie was engaged, unfailingly well prepared, and deeply insightful—a joy to have in class. I was therefore not at all surprised to learn that she earned a very solid “A-” grade on my blind-graded, strictly curved examination.

Because Stephanie was such a great contributor in Civil Procedure class, I was thrilled to learn that she had enrolled in my Constitutional Law class this semester. And she has not disappointed. She has been an active and remarkably insightful participant from day one.

Remarkably, Stephanie’s “A-” in Civil Procedure was the lowest grade that she has received to this point in law school. As a result of her exceptional grades, Stephanie has been named a George Washington Scholar, the highest general academic distinction that we award at this school (which, as you probably know, is consistently ranked as one of the top 25 law schools in the country). But even that distinction greatly understates her classroom success. Stephanie has a GPA in excess of 4.0. While we do not rank our students, I would be shocked if she was not at the very top of her class.

In addition to her academic success, Stephanie is the Editor-in-Chief of The George Washington Law Review. It is exceedingly rare to find a student who is both the leader of the Law Review and the valedictorian in the making. I can only think of a handful over the course of my nearly 20 years teaching at GW. Stephanie is a star among stars.

Stephanie has also somehow found the time to accumulate an extraordinary amount of high-level legal experience during law school, interning or working at a top law firm, the State Department’s Office of the Legal Advisor, the D.C. Circuit, and the Southern District of New York.

Finally, on a personal level, Stephanie is a jewel. She is mature, focused, and dedicated, yet also funny and friendly. She is such a kind and likable person that she manages to walk the fine line (rare in law school) of always knowing the right answer without ever alienating or annoying the other students. She is refreshingly modest and down-to-Earth for someone with her credentials, and she would be a joy to have in chambers.

Having had the privilege of clerking myself — for Judge Guido Calabresi and Justice David H. Souter — I have a good sense of what it is that judges are looking for in a law clerk. Stephanie has it in spades. I recommend her to you without reservation.

Sincerely,

Thomas B. Colby
John Theodore Fey Research Professor of Law

Thomas Colby - tcolby@law.gwu.edu - 202-994-0176

The George Washington University Law School
2000 H. Street, N.W.
Washington, D.C. 20052

January 19, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

Please accept this whole-hearted recommendation of Soohyun “Stephanie” Hahn, rising 3L student at the George Washington University Law School, for a federal judicial clerkship. Stephanie is one of our very best law students among a highly competitive field. Simply put, Stephanie possesses superior analytical, professional, and people skills. She adapted quickly to an extremely challenging environment and emerged as a leader in a time of crisis. It is no surprise Stephanie now serves as Editor-in-Chief of the GW Law Review. I know Stephanie well from the perspectives of her law professor and mentor. I would not hesitate to hire her as a law clerk, a research assistant, or law firm associate. I genuinely look forward to our conversations. I simply cannot recommend her more highly for a judicial clerkship.

Stephanie shines among her peers as a leader and intellectual powerhouse. She consistently performs at the very top of her classes across complex, diverse subjects. She is incredibly thoughtful, hardworking, and humble. She also listens respectfully to all students and responds thoughtfully to rigorous questions. Her peers selected her midterm essay for our 1L class competition in Contracts, and I selected her as one of a few of the model essays in the course. Stephanie also earned an impressive A+ for her final performance in Contracts. Stephanie showed a deep understanding of the material throughout class discussions and during office hours. She shows continued dedication by asking for feedback on the midterm and final exams. Stephanie is eager to advance her skills and find ways to contribute meaningfully as a lawyer.

As a 2L, Stephanie demonstrated a superior mastery of the deeper nuances of Remedies and Federal Courts. It was not an easy semester to conquer such subjects given the pandemic. Despite both classes being completely virtual, Stephanie remained fully engaged and regularly frequented virtual office hours. Throughout the year, Stephanie maintained a positive outlook and balanced competing deadlines. She again earned an A+ in Remedies with a model exam. Meanwhile, Stephanie drafted succinct treatments of vexing federal courts hypotheticals during the semester, and ultimately earned a coveted A in Federal Courts, a course for which many a bright student’s transcript might suffer. I have taught at a number of law schools including Washington & Lee, Florida, West Virginia, North Carolina, and Florida State, and I have no doubt Stephanie would top the charts at any law school. She is extremely proactive as a learner and seeks to gain a deeper understanding of how the law functions at its best. I remain impressed with her maturity and determination, and I cannot wait to see all that Stephanie accomplishes.

Stephanie will add value to the profession when she graduates. She is a trailblazer prepared to make the most of her talents and abilities. Stephanie is deeply valued serving as a law clerk for a federal magistrate judge in New York and then a federal circuit court judge in D.C. I served as a federal law clerk with then-Chief Judge Julia Smith Gibbons of the United States District Court for the Western District of Tennessee and with Judge Ronald Lee Gilman of the United States Court of Appeals for the Sixth Circuit. Based on all that I have seen, Stephanie is particularly well suited to serve as a judicial clerk. With sincere confidence, I believe that Stephanie will apply candor, purpose, and intellectual talent to a judicial clerkship position. Stephanie will continue to exceed expectations as she charts a course that serves the justice system.

I welcome the opportunity to discuss Stephanie’s clerkship application. Stephanie is not only a talented leader, team player, top student, but also a truly wonderful person. With sincere confidence, I believe that Stephanie will be an asset to your chambers and the aims of the federal judiciary.

Sincerely,

Caprice L. Roberts
Visiting Professor of Law

Caprice Roberts - croberts@law.gwu.edu - 202-491-5858

January 19, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am writing this letter with my enthusiastic support of Soohyun Stephanie Hahn's application for a clerkship in your chambers. Stephanie was a student in my Judicial Lawyering class last Fall, a seminar course that I have taught at The George Washington University Law School for some years.

I am confident that Stephanie will be an exceptional law clerk.

I am also proud of her accomplishments, including her recent selection as the first Asian Pacific American Editor-in-Chief for The George Washington Law Review.

Students take the Judicial Lawyering course while participating in judicial externships over the semester. Stephanie was a judicial extern for Judge Patricia Millett of the Court of Appeals, D.C. Circuit. As the only student completing a federal circuit externship that semester, Stephanie contributed unique insights and perspectives in our weekly discussions and reflections. Stephanie has also interned for the Southern District of New York with Magistrate Judge Robert Lehrburger that past summer. Based on our individual meetings, she clearly understood how cases are handled in the federal district and circuit level. She knew how to navigate the complex tasks given to her in both chambers.

Stephanie's research and writing skills have prepared her to be an exceptional law clerk. Students in my class are required to write a bench memo of an unresolved question in a designated case. Stephanie's memo was excellent and scored the highest in the class and she received the only A+ grade. Her memo was used as a sample memo for the rest of the class. Her legal research and ability to understand and incorporate submitted briefs was above expectations. Stephanie's experience at SDNY and the D.C. Circuit as a judicial intern proved fruitful and her previous career in strategic communications carried her strong writing and analytical skills into legal writing.

As mentioned, Stephanie shared with me that she spent several years before law school working in communications roles. I could always rely upon Stephanie to make helpful grammatical edits and suggestions on my book/manuscript I have been working on outside of class. As a current senior judge, I know that her background and work experience would be an asset to chambers, where clerks are expected to engage in thoughtful discussions and analysis and produce quality opinions and memos in a relatively short time frame. Her maturity and ability to engage and collaborate thoughtfully and respectfully with those around her is notable.

I highly recommend Stephanie Hahn as a law clerk and believe she will be a strong addition to your chambers. She is optimistic and a pleasure to work with and I enjoyed getting to know her both in and outside of class. I would be happy to provide additional information about her candidacy.

Sincerely,

Russell F. Canan
Senior Judge, Superior Court of The District Of Columbia

Russell Canan - russellcanan@gmail.com - (202) 879-1952

Soohyun Stephanie Hahn

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Writing Sample

The attached writing sample was written in November 2020 as part of The George Washington University Law School's *Judicial Lawyering* class for students completing a judicial externship during the fall semester. This Bench Memorandum was a capstone assignment, which required students to act as a judicial clerk by conducting legal research and drafting a memorandum regarding a motion to reconsider. The issue at hand addresses whether the Chief Judge's tolling order executed in light of COVID-19 was constitutional and whether the defendant is entitled to a preliminary hearing.

The writing sample does not reflect any substantial feedback from a third party or the adjunct professor, Judge Russell Canan of the D.C. Superior Court.

To: Judge Canan
From: Stephanie Hahn
Date: October 28, 2020
Re: *United States v. John Doe*

This memorandum looks solely at Defendant John Doe’s Motion to Reconsider, which alleges that the failure to provide a preliminary hearing within three days—and the apparent reliance on facts in the absence of that preliminary hearing—supports Defendant’s immediate release. Defendant Doe argues that D.C. Code § 11-947, “Emergency authority to toll or delay proceedings,” is unconstitutional, and even if it were to pass constitutional muster, the Tolling Order exercised under the statute fails because § 11-947 violates D.C. Code § 23-1322, “Detention prior to trial.” For the reasons that follow, this Court should deny Defendant’s motion for reconsideration.

ISSUES PRESENTED

I. *Is D.C. Code § 11-947 constitutional?*

Yes. D.C. Code § 11-947 does not violate separation of powers because the Constitution grants Congress greater power over Article I courts, including the Superior Court of the District of Columbia, than Article III courts. As a result, Congress has plenary power over District of Columbia’s Superior Courts. The statute also does not violate the nondelegation doctrine or due process because it is specific and clear, and is not vague.

II. *Does Chief Judge Morin’s Tolling Order adhere to § 11-947?*

Yes. Defendant’s arguments that the order lacks notice or that the order ignored a provision of the statute lack merit. The Chief Judge’s Tolling Order adheres to D.C. Code § 11-947 because there was sufficient notice of the Tolling Order and the Chief Judge properly considered relevant factors in its execution.

FACTUAL & PROCEDURAL BACKGROUND

The following facts are undisputed. On March 18, 2020, Chief Judge Robert E. Morin of the Superior Court issued an order pursuant to D.C. Code § 11-947 to toll all deadlines and time limits in statutes, court rules, and standing orders that would have expired before May 15, 2020. Amended Order (“Am. Order”). Specifically, the Chief Judge ordered that

[d]ue to the pandemic of the coronavirus (COVID-19), and consistent with guidance issued by the Centers for Disease Control, and in light of the state of emergency in the District of Columbia . . . and the National Emergency . . . , court operations must be adjusted in order to ensure the safety and well-being of litigants, counsel, other members of the public, and Judiciary personnel.

Id.; Joint Committee on Judicial Administration for the District of Columbia Courts, at 1 (May 29, 2020), <https://www.dccourts.gov/sites/default/files/File%20Stamped%20Amended%20Joint%20Committee%20Order%20-Operations%20during%20COVID-19.pdf>.

On April 23, 2020, Defendant John Doe (“Defendant”) was presented in D.C. Superior Court, charged with one count of Unlawful Possession of a Firearm in violation of 22 D.C. Code § 4503(a)(1) and one count of Possession of a Large Capacity Ammunition Feeding Device in violation of 7 D.C. Code § 2506.01(b). Government’s Opposition (“Gov. Opp’n”) at 1.

On May 6, 2020, Defendant filed an Emergency Motion for Bond Review and Release from Custody to Home Confinement Due to Immediate Threat Posed by Pandemic (“Emergency Motion”). *Id.* at 2. The next day, before the Government filed a response, Judge Crowell¹ issued a written order denying Defendant’s motion. *Id.* Defendant opposed, arguing that the order was issued before he had the opportunity to supplement the record with additional medical information. Defendant’s Motion for Reconsideration (“Recons. Mot.”) at 3. On May 13, 2020, Defendant filed

¹ Judge Crowell acted in his capacity as the emergency hearing judge for the week of May 4, 2020. Gov. Opp’n at 2.

the instant motion seeking reconsideration of his Emergency Motion, and the Government filed its opposition to Defendant's motion for reconsideration the following week. *Id.*

STANDARD OF REVIEW

"A motion for reconsideration, by that designation, is unknown to the Superior Court's Civil Rules. The term has been used loosely to describe two different kinds of post-judgment motions . . . brought pursuant to Super. Ct. Civ. R. 59(e) [or] Super. Ct. Civ. R. 60(b)." *Kibunja v. Alturas, LLC*, 856 A.2d 1120, 1128 n.8 (D.C. 2004) (citing *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993)). "The decision whether to grant or deny a motion to alter or amend judgment under Rule 59(e) lies within the broad discretion of the trial court." *Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801, 810 (D.C. 1984) (internal citations omitted) (finding no abuse of discretion by the trial court on denying the motion for reconsideration); *see Queen v. D.C. Transit Sys.*, 364 A.2d 145, 148 (D.C. 1976) (ruling on motion for new trial pursuant to Rule 59 within broad discretion of trial court).

ANALYSIS

Defendant's Motion to Reconsider raises multiple allegations. This memorandum addresses Defendant's arguments specific to Chief Judge Morin's Tolling Order under D.C. Code § 11-947. Defendant contends that § 11-947 is unconstitutional, and even if the statute is found to be constitutional, argues that the Tolling Order does not satisfy § 11-947. Recons. Mot. at 14–20. As a result, Defendant argues that he is entitled to release because he did not receive a preliminary hearing within three days as stated in D.C. Code § 23-1322(d). *Id.*

For the reasons that follow, Defendant's arguments lack merit and his motion to reconsider should be dismissed because Judge Crowell did not abuse his discretion in denying Defendant's Emergency Motion.

I. CONSTITUTIONALITY OF D.C. CODE § 11-947

Defendant alleges that D.C. Code § 11-947, which grants the Chief Judge of the Superior Court emergency authority to toll or delay proceedings, is unconstitutional because it violates the separation of powers doctrine and the nondelegation doctrine, conflicts with existing statutes, infringes due process, and is vague. Defendant's arguments are unconvincing.

A. D.C. Code § 11-947: Emergency authority to toll or delay proceedings

Congress enacted § 11-947 in 2012, *see* D.C. Courts and Public Defender Service Act of 2011, Pub. L. No. 112-229, 126 Stat 1611 (Dec. 28, 2012), for the purpose of granting D.C. courts tolling authority “in the event of natural disasters or emergency situations,” such as “disease,” S. Rep. No. 112-178, at 3–4 (2012), *as reprinted in* 2012 U.S.C.C.A.N. 742, 744–45. The accompanying Senate report recognized and highlighted that a “series of natural and manmade disasters . . . hindered [other state courts’] ability to function and required them to plan for state closures.” *Id.* & n.17. Accordingly, nine states had already given judicial officials or courts “similar authority to toll or delay judicial proceedings after a state of emergency or disaster is declared.” *Id.* at n.19. The report and its accompanying footnote anticipated that “this emergency authority [would] be used sparingly and only in extraordinary circumstances.” *Id.*

Accordingly, the relevant portions of § 11-947 state the following:

(a) Tolling or Delaying Proceedings. —

(1) In general. — In the event of a natural disaster or other emergency situation requiring the closure of Superior Court or rendering it impracticable for the United States or District of Columbia Government or a class of litigants to comply with deadlines imposed by any Federal or District of Columbia law or rule that applies in the Superior Court, the chief judge of the Superior Court may exercise emergency authority in accordance with this section.

(2) Scope of authority. —

(A) The chief judge may enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from the time deadlines imposed by

otherwise applicable laws or rules for such period as may be appropriate for any class of cases pending or thereafter filed in the Superior Court.

(B) The authority conferred by this section extends to all laws and rules affecting criminal and juvenile proceedings (including, pre-arrest, post-arrest, pretrial, trial, and post-trial procedures) and civil, family, domestic violence, probate and tax proceedings.

D.C. Code Ann. § 11-947 (West).

B. Separation of Powers and Nondelegation Doctrine

Defendant argues that § 11-947 is unconstitutional because it allows the judiciary to exercise legislative and administrative tasks that are strictly for the Legislature, a violation of the separation of powers doctrine. Defendant states that “Tolling Orders are, as a technical matter of law, impermissibly legislative and administrative in nature,” Recons. Mot. at 15, and thus the Chief Judge of the Superior Court was improperly granted the power to toll or delay proceedings, even during emergency circumstances. The Government disagrees, stating that both doctrines are federal constitutional principles with no application to a congressional statute allocating legal authority within the D.C. government. Gov. Opp’n at 7. The Government is correct.

1. Separation of Powers Doctrine

Defendant overlooks the fact that Congress has exceptional power over District of Columbia’s non-Article III courts. This is because the government of the District of Columbia is the creation of Congress pursuant to the U.S. Constitution, and in structuring that government, Congress is not bound by the separation of powers limitations that control its powers at the national level. *See Nat’l Mut. Ins. Co. of D.C. v. Tidewater Transfer Co.*, 337 U.S. 582, 588 (1949) (stating Congress has greater power over D.C. courts because “the District of Columbia is not a state within Article III of the Constitution.”); *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 65 (1982); *Wilson v. Kelly*, 615 A.2d 229, 231 (D.C. 1992). Under the plenary power to legislate

for the District of Columbia per Article I, § 8, Clause 17 of the Constitution, Congress has constitutional power to proscribe certain conduct and to designate the appropriate court. *See Palmore v. United States*, 411 U.S. 389, 393 (1973). Therefore, the separation of powers does not apply with equal force in the District of Columbia’s state courts as it does in federal courts to support Defendant’s argument.

Even if this Court were to assume that the separation of powers principle applies to congressional statutes allocating legal authority to D.C. courts, Defendant’s argument fares no better. This is because even federal courts routinely set their own rules about tolling without violating the separation of powers doctrine. *See Lozano v. Montoya Alvarez*, 572 U.S. 1, 11 (2014) (finding equitable tolling is a principle where Congress legislates against a background of common-law adjudicatory principles).

2. Nondelegation Doctrine

Rooted in the principle of separation of powers is the nondelegation doctrine, which “generally prevents one branch of government—executive, legislative, or judicial—from delegating its authority to another.” *Unum Life Ins. Co. of Am. v. District of Columbia*, No. 17-TX-1296, 2020 WL 5666899, at *7 (D.C. Sept. 24, 2020) (citing *Mistretta v. United States*, 488 U.S. 361, 371–72 (1989)). Yet, balanced against the nondelegation doctrine is the recognition that the distinct branches must coordinate for the government to run effectively. *See id.* This delicate balance allows the legislative branch to delegate some of its power to another branch so long as it provides “an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.” *Id.* “In evaluating nondelegation, [the Court’s] analysis is not limited to the specific delegated authority; we consider the statutory scheme as a whole, including

the purposes articulated by the legislature, limits placed on the delegation, and any guidance given to the agency.” *Id.* (citing *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212, 219–20 (1989)).

Here, Congress properly delegated tolling and delaying proceedings to the D.C. Courts through Congress’s enactment of § 11-947. Not only does Congress have plenary power over the Article I courts of the District of Columbia, *see Palmore*, 411 U.S. at 393, but Congress provided sufficiently “intelligible principles” to guide the Court’s discretion, *Unum Life Ins. Co. of Am.*, No. 17-TX-1296 at *7. The statute states that the emergency tolling or delaying proceedings will only be triggered “[i]n the event of a natural disaster or other emergency situation requiring the closure of Superior Court or rendering it impracticable” for litigants to comply with deadlines, and that the Chief Judge “may enter such order or orders as may be appropriate[.]” D.C. Code § 11-947(a)(1), (a)(2)(A).

Moreover, the intelligible principle burden is satisfied when the “statute authoriz[es] regulation in the public interest[.]” *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 474 (2001) (internal quotations omitted), such as the issue at hand. Congress enacted the statute to alleviate burdens caused by natural disasters and emergencies, including diseases, to serve the public interest. S. Rep. No. 112-178, at 3–4. Thus, the narrow scope of circumstances granting emergency tolling and delays in proceedings to the Chief Judge is “well within the outer limits of our nondelegation precedents.” *See Whitman*, 531 U.S. at 474 (finding that, in the history of the Court, only two statutes have lacked the requisite “intelligible principle”—one provided literally no guidance for the exercise of discretion, and the other “conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring fair competition”).² The fact that there has not yet been case law citing § 11-947 since its enactment

² Research does not indicate that the narrow “intelligible principle” analysis has broadened since 2001. For example, the Supreme Court recently found that the federal Sex Offender Registration and Notification Act (SORNA) provision

in 2012 only underscores the narrow scope Congress intended the statute to have in specific circumstances, such as an ongoing pandemic.

Therefore, both the separation of powers and nondelegation doctrine are inapplicable and unconvincing to support Defendant's arguments.

C. Overlapping Statutes

Similarly, the Defendant's claim that § 11-947 seemingly conflicts with other statutes is unpersuasive. Defendant states that he has the right to a preliminary hearing within three days per § 23-1322(d),³ and argues that § 11-923⁴ gives the Superior Court jurisdiction to address only specific criminal violations and "does not confer administrative or legislative powers on the Court." Recons. Mot. at 14–16.

In the case two statutes seem conflicting, the Court's task is to "determine the interpretation of both provisions that best harmonizes them, taking into account their language; their context; their place in the overall statutory scheme; their evident legislative purpose; and the principle that statutes should not be construed to have irrational consequences." *J.P. v. District of Columbia*, 189 A.3d 212, 219 (D.C. 2018). This jurisdiction has stated that where one statutory provision

authorizing the Attorney General to specify the applicability of SORNA's registration requirements to offenders convicted of sex offenses before SORNA's enactment did not violate the nondelegation doctrine. *Gundy v. United States*, 139 S. Ct. 2116 (2019).

³ The relevant statute, § 23-1322(d) "Detention prior to trial" states:

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days.

D.C. Code Ann. § 23–1322 (West).

⁴ The relevant statute, § 11-923(a) "Criminal jurisdiction; commitment" states that "[t]he Superior Court has jurisdiction over all criminal cases pending in the District of Columbia Court of General Sessions before the effective date of the District of Columbia Court Reorganization Act of 1970." D.C. Code Ann. § 11–923 (West).

appears to permit what another provision appears to forbid, we must “determine which of the[] seemingly conflicting provisions governs.” *Bridgforth v. Gateway Georgetown Condo., Inc.*, 214 A.3d 971, 975 (D.C. 2019) (*quoting J.P.*, 189 A.3d at 216). If two provisions conflict, “the more specific statute governs the more general one, and the later supersedes the earlier.” *District of Columbia v. Gould*, 852 A.2d 50, 55 (D.C. 2004) (internal quotation marks omitted).

Based on the above principles, this Court must interpret both § 23-1322 and § 11-923 to be harmonized with § 11-947, which grants emergency tolling orders. To the extent that § 23-1322 or § 11-923 and § 11-947 conflict, § 11-947 would control as the more specific (and more recent) statute. *See Gould*, 852 A.2d at 55. Therefore, although § 23-1322(d) normally imposes that a preliminary hearing take place within three days and § 11-923 states that the Superior Court has jurisdiction to only address specific criminal violations, § 11-947 modifies these two statutes.

In short, Defendant’s arguments that the statutes conflict are meritless because the statutes can be reconciled to complement each another, and § 11-947 supersedes the older statutes.

D. Due Process and Vagueness

[redacted]

II. THE TOLLING ORDER’S ADHERENCE TO D.C. CODE § 11-947

[redacted]

CONCLUSION

For the reasons discussed above, this Court should deny Defendant’s motion for reconsideration. Defendant arguments that § 11-947 is unconstitutional fail on the merits, and further fails to provide sufficient evidence and support that Chief Judge Morin’s Tolling Order was against § 11-947. Judge Crowell did not abuse his discretion in denying Defendant’s Emergency Motion.

Applicant Details

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 Last Name **Lim**
 Citizenship Status **U. S. Citizen**
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 Address

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Applicant Education

BA/BS From **University of California-Berkeley**
 Date of BA/BS **May 2016**
 JD/LLB From **Columbia University School of Law**
<http://www.law.columbia.edu>
 Date of JD/LLB **April 29, 2021**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Human Rights Law Review**
Columbia Journal of Race and Law
 Moot Court Experience **Yes**
 Moot Court Name(s) **American Intellectual Property Law**
Association Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Huang, Bert
bhuang@law.columbia.edu
212-854-8334

Kessler, Jeremy
jkessler@law.columbia.edu

Reid, Arielle
areid@cfal.org
(212) 577-2523 ext. 549

This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 10, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am a 2021 graduate of Columbia Law School and a law clerk at Shearman & Sterling. I write to apply for a clerkship in your chambers beginning in 2023 or any term thereafter.

Enclosed please find a resume, transcript, and writing sample. My writing sample is the appellate brief I wrote for the Harlan Fiske Stone Moot Court. Also enclosed are letters of recommendation from Professor Bert Huang (bhuang@law.columbia.edu), Professor Jeremy Kessler (jkessler@law.columbia.edu), and Arielle Reid (areid@cfal.org).

Please let me know if I can provide any additional information. I can be reached by phone at 714-514-0510 or by email at jyl2184@columbia.edu. Thank you for your consideration.

Respectfully,

Jessica Lim

JESSICA LIM

225 East 34th St., Apt. 5G
New York, NY 10016
(714) 514-0510 • jyl2184@columbia.edu

EDUCATION

Columbia Law School, New York, NY

Juris Doctor, received April 2021

Honors: Harlan Fiske Stone Scholar

Activities: *Columbia Journal of Race and Law*, Articles editor
Columbia Human Rights Law Review, Staff editor
Research Assistant to Professor Kimberlé Crenshaw, Professor Bert Huang
Asian Pacific American Law Students Association, Caravan chair

University of California, Berkeley, Berkeley, CA

Bachelor of Science in Business Administration, Minor in Public Policy, received May 2016

Honors: Dean's Honors

Activities: Walter A. Haas School of Business External Case Competition Travel Team
The Daily Californian, Sportswriter and web producer
Research Assistant to Professor Amy Lerman

EXPERIENCE

Hon. Katharine H. Parker, U.S. District Court for the Southern District of New York

Law Clerk (forthcoming)

October 2022 – September 2023

Shearman & Sterling LLP, New York, NY

Summer Associate

June 2020 – July 2020

Law Clerk

September 2021 – present

Drafting derivatives agreements and researching securities rules and regulations to ensure compliance. Researched and drafted memoranda on issues related to a class antitrust litigation.

Center for Appellate Litigation, New York, NY

Legal Extern

January 2021 – April 2021

Represented client in an appeal from a felony conviction in the New York Supreme Court, Appellate Division, First Department. Drafted appellate brief for a new trial on Molineux evidence and ineffective assistance of counsel.

The Bronx Defenders, New York, NY

Legal Extern, Criminal Defense and Family Defense

September 2020 – December 2020

Researched and drafted motions to dismiss on speedy trial grounds and facial insufficiency. Assisted with desk appearance tickets, including appearances on the record. Assisted with cross-examination in family court.

The Legal Aid Society, New York, NY

Immigration Legal Unit Extern

January 2020 – May 2020

Advocated for minors in their Asylum and Special Immigrant Juvenile Status (SIJS) applications. Conducted legal research on complicated legal issues including the impact of foster care and criminal matters on SIJS applicants.

Accenture, Los Angeles, CA

Consulting Senior Analyst

August 2016 – May 2018

Led client-facing design meetings to understand business need. Developed marketing productivity software for media and entertainment and healthcare firms. Presented and created change management materials to senior executives.

LANGUAGE SKILLS: Korean (conversational)

INTERESTS: Tennis, running, Broadway shows, podcasts



Registration Services

law.columbia.edu/registration
 435 West 116th Street, Box A-25
 New York, NY 10027
 T 212 854 2668
 registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

06/23/2021 22:19:41

Program: Juris Doctor

Jessica Y Lim

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6665-2	Columbia Journal of Race and Law Editorial Board		1.0	CR
L6663-1	Ex. Criminal Appeals	Reid, Arielle I.; Zeno, Mark	2.0	A-
L6663-2	Ex. Criminal Appeals - Fieldwork	Reid, Arielle I.; Zeno, Mark	2.0	CR
L6205-1	Financial Statement Analysis and Interpretation	Bartczak, Norman	3.0	A
L6274-2	Professional Responsibility	Kent, Andrew	2.0	CR
L8084-1	S. Asian American History and the Law	Ishizuka, Nobuhisa	1.0	CR
L9175-1	S. Trial Practice	Dassin, Lev; Horowitz, Jeffrey; Seibel, Cathy	3.0	A-

Total Registered Points: 14.0**Total Earned Points: 14.0**

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6665-2	Columbia Journal of Race and Law Editorial Board		1.0	CR
L6231-2	Corporations	Pistor, Katharina	4.0	B+
L6792-1	Ex. Bronx Defenders on Holistic Defense	Chokhani, Natasha; Cumberbatch, Shannon; James, Karume	2.0	CR
L6792-2	Ex. Bronx Defenders on Holistic Defense - Fieldwork	Chokhani, Natasha; Cumberbatch, Shannon; James, Karume	2.0	CR
L6425-1	Federal Courts	Metzger, Gillian	4.0	B+
L6680-1	Moot Court Stone Honor Competition	Richman, Daniel; Strauss, Ilene	0.0	CR
L8609-1	The Regulation of Sport: Competitive Balance, Corruption & Adjudicating Disputes in Global and US Sports [Minor Writing Credit - Earned]	Mavroidis, Petros C.; Rodgers, Jennifer	2.0	A-

Total Registered Points: 15.0**Total Earned Points: 15.0**

Spring 2020

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	CR
L6793-1	Ex. Immigrant Youth Advocacy	Pont, Amy; Romero, Cristina	2.0	CR
L6793-2	Ex. Immigrant Youth Advocacy - Fieldwork	Pont, Amy; Romero, Cristina	3.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L9090-1	S. Law and Theatre	Chaikelson, Steven	2.0	CR
L6701-1	The Media Industries: Public Policy and Business Strategy	Knee, Jonathan; Wu, Timothy	3.0	CR

Total Registered Points: 13.0

Total Earned Points: 13.0

Fall 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6341-1	Copyright Law	Wu, Timothy	3.0	A
L6241-1	Evidence	Shechtman, Paul	3.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6169-2	Legislation and Regulation	Kessler, Jeremy	4.0	A-
L6675-1	Major Writing Credit	Wu, Timothy	0.0	CR
L6685-1	Serv-Unpaid Faculty Research Assistant	Crenshaw, Kimberle W.	1.0	CR
L6683-1	Supervised Research Paper	Wu, Timothy	2.0	CR

Total Registered Points: 13.0

Total Earned Points: 13.0

Spring 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6863-1	AIPLA Moot Court	DeMasi, Timothy; Lebowitz, Henry; Strauss, Ilene	0.0	CR
L6133-3	Constitutional Law	Ponsa-Kraus, Christina D.	4.0	B+
L6108-4	Criminal Law	Harcourt, Bernard E.	3.0	B
L6369-1	Lawyering for Change	Sturm, Susan P.	3.0	B+
L6121-2	Legal Practice Workshop II	DeMasi, Timothy; Lebowitz, Henry	1.0	P
L6116-2	Property	Briffault, Richard	4.0	B+

Total Registered Points: 15.0

Total Earned Points: 15.0

January 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-2	Legal Methods II: Methods of Statutory Drafting and Interpretation	Ginsburg, Jane C.; Louk, David S	1.0	CR

Total Registered Points: 1.0

Total Earned Points: 1.0

Fall 2018

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-5	Civil Procedure	Lynch, Gerard E.	4.0	B
L6105-1	Contracts	Kraus, Jody	4.0	B+
L6113-4	Legal Methods	Briffault, Richard	1.0	CR
L6115-6	Legal Practice Workshop I	Lebovits, Gerald; Newman, Mariana	2.0	HP
L6118-3	Torts	Tani, Karen	4.0	B+

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 86.0

Total Earned JD Program Points: 86.0

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2020-21	Harlan Fiske Stone	3L
2019-20	Harlan Fiske Stone	2L

Pro Bono Work

Type	Hours
Mandatory	40.0
Voluntary	5.0

Official Academic Transcript from:
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 OFFICE OF THE REGISTRAR
 128 SPROUL HALL #5404
 BERKELEY, CA 94720-5404

TELEPHONE: 510-643-7720

Academic Transcript of:
 JESSICA LIM
 Date of Birth: 29-Jan-xxxx
 Transcript Created: 18-Jul-2016

Requested by:
 JESSICA LIM
 9888 NOVARA LN.
 CYPRESS, CA 90630-6823

E-Mail: jessicalimis@gmail.com



Document Type: THIRD-PARTY SECURE PDF

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 JESSICA LIM
 9888 NOVARA LN.
 CYPRESS, CA 90630-6823

E-Mail: jessicalimis@gmail.com

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23492598 60001-029 U LIM,JESSICA YOUNG JI *BUS ADM * 1
 RESIDENT CYPRESS,CA 01-29-94 ***-**-6283 FC 07-18-16
 AUG 2012 REGULAR

- SECONDARY SCHOOL - DATE GRADUATED -
 OXFORD ACADEMY JUNE 2012

-UNIVERSITY REQUIREMENTS-
 08-12 UC ENTRY LVL WRITING-REQT SATISFIED
 08-12 AMERICAN HISTORY -REQT SATISFIED
 08-12 AMERICAN INSTITUTION-REQT SATISFIED

- BERKELEY CAMPUS REQUIREMENTS -
 05-14 AMERICAN CULTURES -REQT SATISFIED

- DEGREES -

540 BACHELOR OF SCIENCE MAY 13, 2016

811 ADV PLACEMENT EXAM- EUR HIST, 05-10 5.3
 812 ADV PLACEMENT EXAM- AM HIST, 05-11 5.3
 813 ADV PLACEMENT EXAM- ENGL LANG, 05-11 0.0
 814 ADV PLACEMENT EXAM- MATH AB, 05-11 0.0
 815 ADV PLACEMENT EXAM- ENGL C/L, 05-12 5.3
 816 ADV PLACEMENT EXAM- AM GOV POL, 05-12 2.7
 817 ADV PLACEMENT EXAM- MATH BC, 05-12 5.3
 818 ADV PLACEMENT EXAM- MATH AB SUB, 05-12 0.0
 819 ADV PLACEMENT EXAM- STAT, 05-12 2.7
 TOTAL: 26.6*

FALL SEMESTER 2012
 820 SURVY WORLD HISTORY IAS 45 4.0 A- 14.8
 821 DESCRIPTIVE INTRO L & S C70V 3.0 A 12.0
 822 ANAL GEO & CALCULUS MATH 16B 3.0 A+ 12.0
 823 INTRO PROB STAT CAL STAT 20 4.0 A 16.0
 14.0* 54.8*
 14.0*ATTM 14.0*PSSD 54.8*GP 26.8BAL

824 HONORS TO 12-12

824A Dean's Honors

SPRING SEMESTER 2013
 825 ELEM KOREAN HERITAG KOREAN 1BX 5.0 A 20.0
 826 INTRO TO ECONOMICS ECON 1 4.0 A- 14.8
 827 PHILOS & VALUES L & S 160B 3.0 A 12.0
 828 TEACHING MATH UGIS 81B 2.0 P PF
 829 RESEARCH SOC SCI UGIS 192B 2.0 P PF
 12.0* 46.8*
 26.0*ATTM 26.0*PSSD 101.6*GP 49.6BAL

830 HONORS TO 05-13

FALL SEMESTER 2013
 831 PRINCIPLES OF BUS UGBA 10 3.0 A- 11.1
 832 INT KOREAN HERITAG KOREAN 10AX 5.0 P P/NP
 833 INTRO HUMAN NUTR NUSCTX 10 3.0 P P/NP
 834 HINDU MYTHOLOGY RELIGST C165 4.0 B 12.0
 7.0* 23.1*
 33.0*ATTM 33.0*PSSD 124.7*GP 58.7BAL

835 HONORS TO 12-13

SPRING SEMESTER 2014
 836 GENERAL ASTRONOMY ASTRON C10 4.0 P P/NP
 837 MACRO ANALYSIS ECON 100B 4.0 A- 14.8
 838 AMERICAN CULTURE MUSIC 26AC 4.0 A+ 16.0
 839 SOC OF ENTREPRENEUR SOCIOL 121 4.0 P P/NP
 8.0* 30.8*
 41.0*ATTM 41.0*PSSD 155.5*GP 73.5BAL

840 HONORS TO 05-14

FALL SEMESTER 2014
 841 INTRO FIN ACCOUNT UGBA 102A 3.0 B+ 9.9
 842 INTRO TO FINANCE UGBA 103 4.0 A- 14.8
 843 LEADING PEOPLE UGBA 105 3.0 B+ 9.9
 844 DIRECTED GROUP STDY GERMAN 98 1.0 P PF
 845 ENERGY, SOCIETY PUB POL C184 4.0 P P/NP
 10.0* 34.6*
 51.0*ATTM 51.0*PSSD 190.1*GP 88.1BAL

Walter Wong
 Walter Wong, University Registrar



23492598 60001-029 U LIM,JESSICA YOUNG JI *BUS ADM * *2
 RESIDENT CYPRESS,CA 01-29-94 ***-**-6283 FC 07-18-16
 AUG 2012 REGULAR

SPRING SEMESTER 2015
 846 BUSINESS COMM UGBA 100 2.0 A- 7.4
 847 INTRO MANAGER ACCT UGBA 102B 3.0 A- 11.1
 848 SOC & POL ETH ENV UGBA 107 3.0 B+ 9.9
 849 LEAD NP AND SOC ENT UGBA 192A 3.0 B+ 9.9
 850 DIRECTED GROUP STDY UGBA 198 1.0 P PF
 851 DIRECTED GROUP STDY UGBA 198 2.0 P PF
 852 WEALTH AND POVERTY PUB POL C103 4.0 A- 14.8
 15.0* 53.1*
 66.0*ATTM 66.0*PSSD 243.2*GP 111.2BAL

FALL SEMESTER 2015
 853 MICROECONOMIC ANALY UGBA 101A 3.0 A 12.0
 854 MARKETING UGBA 106 3.0 A 12.0
 855 NEGOTIATION UGBA 152 3.0 B+ 9.9
 856 INTRO PUB POL ANAL PUB POL 101 4.0 B 12.0
 857 SPEC TOPICS PUB POL PUB POL 190 4.0 A- 14.8
 17.0* 60.7*
 83.0*ATTM 83.0*PSSD 303.9*GP 137.9BAL

SPRING SEMESTER 2016
 858 SPRDSHEETMODELING UGBA 104 3.0 A 12.0
 859 SUPERV INDEP STUDY UGBA 199 2.0 P PF
 860 FREEDOM SPECH PRESS MEDIAST 104A 3.0 A- 11.1
 861 SPEC TOPICS PUB POL PUB POL 190 4.0 A+ 16.0
 862 DEVELOP & GLOBA SOCIOL 127 4.0 A 16.0
 14.0* 55.1*
 97.0*ATTM 97.0*PSSD 359.0*GP 165.0BAL

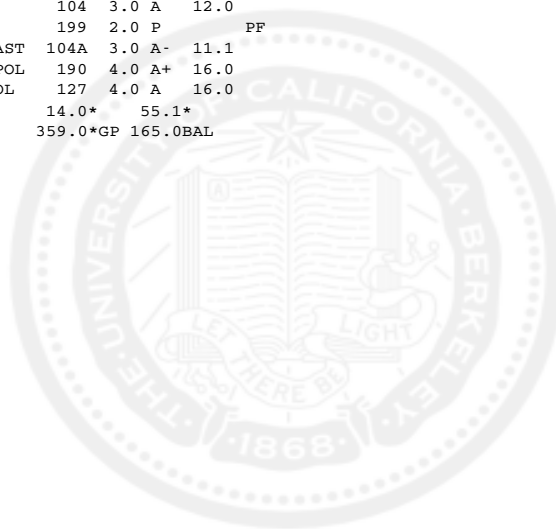
863 Dean's Honors

- MEMORANDA -
 950 08-28-14 FIELD OF STUDY CHANGED FROM
 951 L & S UNDECLARED.

TOTAL PASS/NOT PASS ATTM 30.0 PASSED 30.0

OTHER TRANSFER CREDIT 26.6

SEMESTER CREDITS COMPLETED 153.6 UC GPA 3.701



TRANSCRIPT INFORMATION

Office of the Registrar
University of California
Berkeley, California 94720-5404

History

The University of California was created by an Act of the State Legislature in 1868, and classes have been given at Berkeley since 1873.

Units of Credit

Until September 1966, credits were recorded as semester units (hours). From September 1966 through summer 1983 credits were recorded as quarter units (hours). Beginning with the fall term, 1983, credits are recorded as semester units (hours). Quarter system requires 180 units for bachelor's degree. Semester system, 120.

Advanced Standing

Transfer Credit

Only credit that is accepted by the University is indicated on the transcripts of Berkeley students. Individual courses are not shown.

CLEP-Advanced Placement Credit

Examinations and credits accepted are indicated on the transcript in the same manner as transfer credit.

Course Numbering System

1 - 99	-	Lower division courses
100 - 199	-	Upper division courses
200 - 299	-	Graduate courses
300 - 499	-	Professional courses for teachers or prospective teachers
600 - 602	-	Special Study

Grades of Scholarship

Grades

The work of all students on the Berkeley campus is reported in terms of the following grades:

A	-	Excellent
B	-	Good
C	-	Fair
D	-	Barely Passed
F	-	Failure
P	-	Passed at a minimum level of C-
NP	-	Not Passed
S	-	Satisfactory or passed at a minimum level of B-
U	-	Unsatisfactory
I	-	Work incomplete, due to circumstances beyond the students control, but of passing quality
IP	-	Work in progress; final grade to be assigned upon completion of entire course sequence
NR	-	Temporary administrative grade; not included in grade point computation

The grades A, B, C, and D may be modified by plus (+) or minus (-) suffixes.

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Grade Points

Grade points per unit are assigned as follows: A=4, B=3, C=2, D=1, and F=none. When attached to the grades A, B, C, and D, plus (+) grades carry three-tenths of a grade point more per unit, and minus (-) grades carry three-tenths of a grade point less per unit than unsuffixed grades, except for A+, which carries 4.0 grade points per unit as does an A.

Courses graded P, NP, S, U, I, IP, or NR are not used in computing the grade point average.

Scholastic Standing

Good Standing

Undergraduate: C average (non-negative balance)
Graduate: B average or better on all work attempted at any UC campus after a bachelor's degree.

Academic Probation

Undergraduate students are placed on academic probation if at the end of any term their cumulative grade point average is less than 2.0 (C average) computed on the total of all courses undertaken in the University. However, in the Colleges of Chemistry and Engineering, probation is determined on a term basis.

Credit Codes

Credit codes may determine the calculation of credit or annotate a course entry as follows:

Current Records System

Fall 1975 to Present

Note: An "I" assigned as of Fall 1973 to present is not included in grade point computation.

Pass/Fail Courses

PF-Course offered only on Pass/Not Pass basis
P/NP-Undergraduate grading option Passed/Not Passed
SF-Graduate grading option Satisfactory/Unsatisfactory
SU-Graduate courses offered only on Satisfactory/Unsatisfactory basis

PF, P/NP, SF, SU courses are not included in units ATTM (attempted) or units PSSD (passed), but are included in CREDITS COMPLETED.

Sequence Courses

T1, T2, T3-Sequence course in progress
TX-Sequence course with variable terms, in progress
TP-Sequence course in progress, taken P/NP
TS-Sequence course in progress, taken SF
2T, 3T, TT, PT, ST-Final term of sequence course with total units and final grade

Resolution of Incomplete Grades

J1	-	I replaced with letter grade
PJ	-	I replaced with a P or NP for an undergraduate
SJ	-	I replaced S or U for a graduate
JT	-	I replaced with a grade for final term of sequence course
J5	-	I to be retained permanently by an undergraduate
Q1	-	I lapsed to F
PI	-	I lapsed to NP
Q2	-	IP grade lapsed to I
RZ	-	Replacement of original grade; no credit calculation

Repeated Courses

The G-Series code appearing after a repeated course entry controls credit and grade points earned.

RD	-	Original D grade; units attempted, units passed and grade points counted
RF	-	Original F grade; units attempted counted
RR	-	Original NP, I or NR; no credit calculation
G1	-	D grade repeated; additional grade points calculated
G+	-	D+ grade repeated; additional grade points calculated
G-	-	D- grade repeated; additional grade points calculated
G2	-	F grade repeated; units passed and grade points calculated
PG	-	NP grade repeated; passed/not passed units calculated
GØ	-	NP grade repeated for a letter grade; units attempted, units passed, grade points calculated; incomplete grade repeated with permission
GP	-	P grade repeated; no credit allowed
G5	-	C- or better grade repeated; no credit allowed
GT	-	I (lapsed IP) grade repeated; units attempted, units passed, grade points calculated
GB	-	2 nd repeat of an F without permission; only units passed calculated
GI	-	I repeated without permission; units attempted, units passed, but no grade points calculated
GE	-	Units attempted and grade points calculated; units passed not calculated

Miscellaneous

N1	-	Grade corrected by instructor
K1	-	Credit by examination; see memoranda
DR	-	Course dropped after eighth week of term

Prefixes

C	-	Cross-listed
H	-	Honors
N	-	Summer course
R	-	Reading & Composition
W	-	On-line

Previous Record System

Prior to Fall 1975

Note: An "I" assigned prior to Fall 1973 is included in grade point computation as an F grade.

Prior to Fall 1966, explanations are included on the transcripts:

E	-	Education Abroad Program
G	-	Course repeated
GM	-	Duplicate Matriculation Credit
K	-	I grade completion deferred without loss of grade points
L	-	I completed (replaced with grade)
M	-	Allowed to take credit by examination
N	-	Grade points for I grade allowed upon completion
Q	-	Grade changed by instructor
V	-	Course in progress (sequence course)
J	-	I grade lapsed to F
R	-	Course completed in Extension Division
T	-	Course dropped
GL	-	Grade by special examination

April 10, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am writing with enthusiasm to recommend Jessica Lim for a clerkship in your chambers. Jessica is a recent graduate of Columbia Law School, where she earned our honors designation of Stone scholar, served on two journals, and participated in externships with the Center on Appellate Litigation and with the Bronx Defenders. She now works at Shearman & Sterling.

It has been a delight to work with Jessica. She volunteered to be a research assistant for me, during the summer after she graduated. We had not worked together otherwise, and she had not been a student of mine, but I was impressed by her initiative. As a research assistant for me this past summer, she immersed herself in learning about the certiorari process at the Supreme Court. We began our work with a set of in-depth conversations about a new academic article on the Court's practice of choosing specific questions to address (and the practice of parties identifying "questions presented" for the Court to consider granting). In our discussions, Jessica offered sharp insights which advanced my thinking about these topics. For example, we discussed how hypothetical proposals for requiring the Court to review each granted case more comprehensively (going beyond the specific "questions presented") might be largely futile given the necessary work for any court of narrowing issues, and given the available procedural tools for serving this purpose, such as the appellate devices of waiver and forfeiture.

Throughout our discussions, Jessica showed a very fine intuition for the range of possible interactions among higher and lower courts, for the realities of the appeals process, and for competing conceptions of the Court's role. Jessica also showed resourcefulness and excellent judgment in the research aspects of our work together. She curated the literature for me, with a keen eye for what might be most helpful and interesting—not just what was most obviously related to our topics, but also articles that may have seemed out-of-scope but were in fact related in a more conceptual way that she would take care to explain. For example, she thoughtfully engaged a literature that considers the role of the Court in "reaching out" to create new questions beyond those originally emphasized in the parties' petition (as well as the role of amici in drawing the Court's attention to those extra issues). Jessica then followed this up by compiling and creating a spreadsheet of recent cases in which the Court had requested and received supplemental briefing, sorting out those which were preliminary or jurisdictional inquiries versus those which were enlargements of the scope of the core substantive issues in the case.

Even in our short time working together, I have found Jessica to be highly impressive—insightful at multiple levels, intellectually engaged, and thoroughly professional. I hope you will find a chance to interview her. If I can answer any other questions, my phone is (857) 928-4324, and my e-mail is bhuang@law.columbia.edu. Thank you very much.

Sincerely,

Bert I. Huang
Michael I. Sovern Professor of Law
Columbia Law School

Bert Huang - bhuang@law.columbia.edu - 212-854-8334

April 10, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

It is a pleasure to recommend Jessica Lim for a clerkship in your chambers. I first met Jessica when she took my Legislation & Regulation course in the Fall of 2019, and her impressive performance then has stayed with me. In a lecture hall of 75 students, Jessica stood out as one of the best-prepared and most thoughtful participants. She brought to class, to office hours, and to her written work an intellectual energy and felicity of expression from which her peers and her teacher greatly benefitted. Furthermore, it was obvious to those around her that Jessica's illuminating engagement was driven not by a desire to score points, but rather to get to the heart of what it means to serve the public interest – whether as an administrator, an advocate, or a judge. As a result, Jessica's fellow students listened to her well-chosen interventions with real curiosity and respect; she lent both clarity and gravity to our discussions.

In light of Jessica's facility in the lecture hall, I was not surprised to find that she had written one of the finer exams in the class. This exam was an eight-hour take-home, featuring a long issue spotter and an essay question concerning the costs and benefits of the judicial use of purposive statutory interpretation. Making commendable use of the extended time frame, Jessica produced an exam that read like two strong bench memos. She cut through extraneous detail, flagged red herrings, and zeroed in on the decisive questions of law and fact. Jessica's writing demonstrated easy control of the relevant precedents and, where precedent ran out, a veteran's grasp of the normative tensions and policy choices underlying administrative law doctrine.

In addition to getting to know Jessica in the classroom, I was lucky enough to benefit from Jessica's service as a research assistant in the 2020-2021 academic year. She performed exceptionally well: easily digesting the somewhat unorthodox doctrinal and policy arguments made by me and my co-author, Chuck Sabel, in a draft essay on the judicial review of agency guidance documents; making timely and useful substantive recommendations; and catching a number of logical and technical missteps.

I have no doubt that Jessica would be a winning addition to your chambers, and recommend her enthusiastically. Please do not hesitate to contact me if I can be of assistance.

Best wishes,

Jeremy Kessler

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ARIELLE REID
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October 1, 2021

Dear Judges,

Please accept this letter in support of Jessica Lim's application for a clerkship. I supervised Jessica during her Spring 2021 semester externship with the Center for Appellate Litigation, an appellate public defender's office. Her contributions in the classroom as well as in the field allow me to wholeheartedly recommend her for a clerkship.

Because we are an appellate office, legal research and writing are the bread and butter of our work. Jessica's skills in those areas were among the best I've encountered in years of working with law students. She and her partner drafted an appellate brief on behalf of a client from start to finish, including selecting the issues to raise and conducting the legal research necessary to craft the argument. Jessica was assigned to write the statement of facts as well as a complex legal point that required melding substantive evidentiary rules with constitutional right to counsel law. Jessica dived wholeheartedly into the legal research, exhausting the wells of precedent and analyzing ways in which that precedent could be utilized in furtherance of our client's claim. As a result, she was able to craft a creative and innovative argument for relief.

When it came time to write the brief, Jessica's prose was clear, concise, and error-free. She identified and incorporated all relevant facts, and demonstrated a solid command of how to wield them most effectively. Notably, Jessica resisted the common temptation among student advocates to exaggerate and editorialize the facts. Although the brief was an advocacy piece, I believe Jessica's measured tone and straightforward narrative voice would lend itself well to judicial writing.

In addition to the brief-writing component of the externship, students were required to attend a weekly seminar. Because of the COVID-19 pandemic, the seminar met remotely in the evenings. Still, Jessica approached every class with an eagerness to learn. She demonstrated an aptitude for picking up knowledge and new

skills quickly, and almost immediately incorporated them into her work. Her self-motivation was striking given the demands and challenges of virtual learning.

As an additional part of the externship's seminar component, students were tasked with workshopping one another's briefs. The feedback Jessica offered to her classmates on their work was insightful and spot on, even on legal issues that she had not herself encountered. She was able to identify ways in which arguments could be more persuasively framed and organized, a skill that even practicing lawyers struggle to hone.

Finally, it is worth noting that Jessica was a pleasure to work with and to supervise. She was neither afraid to ask questions nor to assert her opinions, and she welcomed constructive feedback on how she could grow and improve her skills. She has an outsized work ethic, which was evident in the way she approached the semester with our office. For all of these reasons, I am confident that she would be an amazing addition to chambers. I recommend her without hesitation.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Arielle Reid', with a large, sweeping loop at the end.

Arielle Reid
Supervising Attorney

WRITING SAMPLE

This is the appellate brief I wrote in Fall 2020 for the Harlan Fiske Stone Moot Court. I wrote and edited this brief without outside assistance, and I have removed all sections written by my partner.

The case involved the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which created the Paycheck Protection Program (“PPP”). The CARES Act authorized banks to process PPP loans on behalf of the government. Relator-Appellant Tanya Moore, a Commercial Loan Officer for Confluence Bank, alleged that Confluence Bank was certifying false loan applications to the government. Ms. Moore filed a False Claims Act (“FCA”) *qui tam* action against Confluence Bank, and the United States government moved to intervene and dismiss. The case was initially brought in the Northern District of Texas.

I represented the Relator-Appellant Tanya Moore. The Northern District of Texas granted the government’s motion to dismiss, and my client appealed to the Fifth Circuit.

The question presented here was whether the relator-appellant met the pleading requirements for scienter and materiality under the FCA.

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT RELATOR DID NOT MEET THE PLEADING STANDARDS FOR SCIENTER

The Relator sufficiently alleged that the Defendants’ fraudulent conduct was carried out with the requisite scienter. The False Claims Act (“FCA”) allows relators to sue an individual who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval” or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.” 31 U.S.C. § 3729(a)(1). In addition to the statutory requirements, this Court adopted a test that requires showing (1) “there was a false statement or fraudulent course of conduct; (2) made or carried out with the requisite scienter; (3) that was material; and (4) that caused the government to pay out money or forfeit moneys due (i.e., that involved a claim).” *United States ex rel. Longhi v. United States*, 575 F.3d 458, 467 (5th Cir. 2009) (citing *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008)). The FCA defines knowledge as when a person: “(1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information.” 31 U.S.C. § 3729(b). Scienter, along with the materiality requirement, are required to provide fair notice and combat the possibility of open-ended liability under the FCA. *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989, 2002 (2016).

A. The district court erred in applying a higher standard of review than required for scienter on a motion to dismiss

The district court applied a more stringent standard of review than required for Ms. Moore’s allegations on state of mind issues. The court demanded more facts than this Court has previously found necessary to survive a motion to dismiss for scienter. Despite the court’s acknowledgement that at least “some employees acted with unclear intents and potentially base

motives” (R. at 97), the court found for the defendant instead of looking at the allegations in the light most favorable to the nonmoving party.

To survive a motion to dismiss on scienter, the Relator must only allege knowledge *plausibly* under Fed. Rules Civ. Proc. Rule 8 and need not allege state of mind with particularity under the exception in Rule 9(b). The district court improperly required that Relator allege concrete facts instead of requiring only that the Relator plead enough factual content for the court to draw a reasonable inference. R. at 91; *see United States v. Bollinger Shipyards, Inc.*, 775 F.3d 255, 260 (5th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted)) (finding plausibility requires only pleading “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”) The plausibility standard requires more than a sheer possibility but does not require probability that the defendant acted unlawfully. *Id.* This Court has stated that a court evaluating an allegation of scienter must recognize that it is difficult to allege another party’s state of mind. *See Int’l Shortstop, Inc. v. Rally’s, Inc.*, 939 F.2d 1257, 1266 (5th Cir. 1991). Therefore, state of mind issues are generally not suited for resolution at early stages like a motion to dismiss or motions for summary judgment. *Thomas v. Napolitano*, 449 Fed. Appx. 373, 376, 2011 WL 5420821 (5th Cir. Nov. 9, 2011) (finding that resolution before fact finding or at summary judgment is generally disfavored for state-of-mind questions).

Further, state of mind issues are primarily questions of fact. *See Int’l Shortstop, Inc.*, 939 F.2d at 1265 (5th Cir. 1991) (describing a “party’s state of mind [as] inherently a question of fact which turns on credibility.”); *Thomas*, 449 Fed. Appx. 373 at 376 (5th Cir. Nov. 9, 2011) (“State of mind... is [a] factual issue, difficult to resolve without testimony, and this case demonstrates why summary judgment is disfavored for state-of-mind questions”). This Court has stated that all

facts and inferences should be viewed in the light most flattering to the nonmoving party. *See Sonnier v. State Farm Mut. Auto. Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007) (the court must “accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff”).

In its motion to dismiss, the Government stated that the Relator “lacks the necessary insider knowledge of Confluence’s workings to sufficiently claim that Confluence Bank or its customers willfully violated the FCA” (R. at 76), and the district court improperly agreed with the Government’s statement and erred in dismissing Ms. Moore’s allegations. The lower court ignored Ms. Moore’s plausible allegations and the many facts she pled that would allow the court to draw a reasonable inference that Confluence Bank had the requisite scienter and failed to view the facts and inferences in the light most flattering to the nonmoving party. In fact, the district court explicitly refused to make reasonable inferences based on factual content despite finding that some employees acted with unclear intents and “potentially base motives.” R. at 97. Also, the district court improperly faulted Relator for being unable to “provide further proof of a deliberate intent by the Bank or its employees to defraud the United States.” This Court expressly found that the FCA does not require specific intent to defraud the United States Government. *United States ex rel. Longhi v. United States*, 575 F.3d 458, 468 (5th Cir. 2009). Therefore, the district court confused the knowledge requirement with a specific intent to defraud the Government. *See id.*; 31 U.S.C. 3729(b)(1)(B)¹.

Given the appropriate pleading standard on a motion to dismiss, the Relator adequately pleaded Defendants’ scienter by alleging facts that lead to a reasonable inference that the Defendants knowingly presented false claims for payment under 31 U.S.C. § 3729(a).

¹ A structural interpretation of this statute would demonstrate that by including 31 U.S.C. 3729(b)(1)(B) within the definition of the terms “knowing” and “knowingly”, Congress intended to contrast the definition for knowledge with specific intent to defraud.

- B. Relator adequately pled a pattern of poor loan underwriting and lack of performance checks that lead to an inference that Defendant knowingly submitted false claims for payment and made or used false records, or caused false records to be used

The CARES Act and the Interim Final Rule established the Defendants' responsibility to certify all of the information in a Borrower's PPP application before submitting an approval to the SBA. 85 Fed. Reg. 33010, 33013. As the trial court appropriately found, any misrepresentations by Defendants to the SBA regarding the Borrower's eligibility would be a false claim under Section 3729(a). R-96. Ms. Moore pled numerous examples of false claims and provided evidence of the Defendants' knowledge of the false information contained in these applications that were not cured but nonetheless submitted to the Government as approved PPP loans.

1. Defendant misrepresented 3D6's and Blecher's Board Games' eligibility for the PPP loan

The Defendant submitted applications for borrowers 3D6 and Blecher's Board Games despite their ineligibility for a PPP loan. Ms. Moore pled adequate facts to support an inference that the Defendant did so knowingly, or at the very least, with deliberate ignorance or reckless disregard for the truth.

Ms. Moore alleged that on April 17, 2019, she informed her manager, Lake, that Blecher's Board Games did not disclose that it was owned by 3D6 in its PPP application, that Confluence had previously approved 3D6's PPP application, and that Blecher's Board Games likely had access to other capital from its parent company because of 3D6's previous application. R. at 32. Ms. Moore also informed Lake that Blecher's should be considered part of 3D6 according to 13 C.F.R. § 121.103. *Id.* Despite this, in a meeting between Ms. Moore and Lake the next day, Lake ignored Ms. Moore's concerns and instead told her that if she "focused less on what other people were doing, [she] might get more work done. *Id.*; see also *United States ex rel. Integra Med Analytics,*

LLC v. Creative Solutions in Healthcare, Inc., 2019 WL 5970283, *6 (Nov. 13, 2019) (finding allegations that managers would get “pissed off” and would pressure therapists to provide services that could be reimbursed without regard for whether it was needed or not probative of scienter). Similar to *Integra Med Analytics*, when the Relator drew attention to this false claim, her manager would make comments that pressured Relator to return to work, with little regard for whether the claim was in fact false. The fact that Relator communicated this to her manager points to actual knowledge or, at the very least, a reckless disregard for the truth. Also, the Defendant acted in reckless disregard of the truth or falsity of the information by not following the Interim Final Rules that clearly establish “the lender must confirm ... the information provided by the lender to SBA accurately reflects lender’s records for the loan[.]” 13 C.F.R. pt. 120. The Defendant’s records included 3D6’s previously approved application, so the Defendant acted in reckless disregard of the requirement that no other funding be available.

Further, in the same April 17, 2019 conversation, Ms. Moore told her manager that Blecher’s parent company 3D6 had been approved for a \$10 million loan in late February despite not meeting requirements in the CARES Act. *Id.* Ms. Moore included 3D6’s Borrower Application Form to support her allegations that the loan was improperly approved because 3D6 reported employees that are double the statutory limit and revenues that far exceed the maximum allowed under the NAICS standards. R. at 53, 55. The Government’s motion to dismiss does not dispute that 3D6 may have impermissibly received a loan but instead says that going after 3D6 would be expensive and not advisable. R. at 80. As above, Relator drew her manager’s attention to the misrepresentation that Confluence made of 3D6’s eligibility and little was done in response. R. at 32.

2. Defendant knowingly submitted a false claim for Mursea Hotels

Relator sufficiently alleged that Defendant knowingly submitted a false claim for Mursea Hotels. Prior to March 4, 2019, Relator rejected the Mursea Hotels' PPP loan application because Mursea Hotels had exceeded the revenue cap for a small business under the NAICS size requirement and because she read that Mursea Hotels was expanding to include hotels in other areas. R. at 33-34. Under 13 C.F.R. § 121.101, a hotel is a small business if it makes less than \$35 million a year. Under Section 1102(a)(36)(F), the PPP loan was approved primarily for payment of payroll obligations and employee benefits with some other categories including payments of interest on any mortgage obligation, rent, and "interest on any other debt obligations that were incurred *before* the covered period." While its debt obligation for expanding into a second city seems to have been incurred prior to the PPP loan's covered period, the expansion into the third city is likely an impermissible use of its funds. R. at 66. On top of this, the loan approved for Mursea Hotel was for \$18 million, which is well above the statutory maximum of \$10 million.

Despite Ms. Moore's rejection of the application, on March 4, 2019, Confluence approved the loan. R. at 33. When Ms. Moore flagged this to her loan manager, Lake again dismissed her concerns and explained it away as a possible system glitch. This nonchalant dismissal of Ms. Moore's concern adequately supports a reasonable inference that the lender acted with reckless disregard with respect to compliance with the PPP statute. *Id.*; see also *United States v. Brookdale Senior Living Communities, Inc.*, 892 F.3d 822, 837 (6th Cir. 2018), *cert. denied sub nom. Brookdale Senior Living Communities, Inc. v. U.S. ex rel. Prather*, 139 S. Ct. 1323 (2019) (finding allegations that Relator's concerns were repeatedly dismissed supported a reasonable inference that Medicare provider acted with reckless disregard). Three months after Ms. Moore flagged the Mursea Hotels application to Lake, Confluence's VP/Commercial Loan Officer played

a phone call from Wanda Rees, co-owner and President of Mursea Hotels, expressing surprise and gratitude to Confluence for its approved PPP loan over the loudspeaker as an encouragement to employees to “keep it up.” R. at 34. While the Government rejects that this is demonstrative of Confluence’s knowing or reckless violation of the FCA because of its tone of surprise (R. at 81), this ignores the many ways that Ms. Moore flagged the application to Confluence prior to this call, including rejecting the loan and flagging the loan when the rejection was overridden because of a “system glitch.” Additionally, Mursea Hotels’ surprise of being approved is irrelevant to the inquiry of whether Confluence acted in reckless disregard of the truth or falsity of the application since Confluence was responsible for certifying that the borrower was eligible for the PPP loan.

3. By approving loans with missing signature pages and pre-filling out questions, Defendants misrepresented small business concerns’ eligibility for the PPP Loan

Ms. Moore alleged specific instances where the Loan Officers and Loan Manager, Lake, presented false claims for payment to the government with deliberate ignorance for the truth or falsity of the information by pre-filling out the applications and approving incomplete applications. Even if the Ms. Moore’s allegations do not rise to knowledge that the information was false or an inference of deliberate ignorance, they exhibit at least reckless disregard for the truth or falsity of the information.

Cote acted with deliberate ignorance, even going so far as to pre-fill out Borrower Application forms with “No” responses to key questions that required certification in order to be approved for a loan. R. at 31. Further, Cote and Steven Presh approved two applications, Liberation Booksellers and Linda Beauty Bar, without a signature page. R. at 35-36. According to the PPP Interim Final Rule, it is the lenders’ responsibility to confirm receipt of borrower certifications in the application form. 85 Fed. Reg. 33010, 33013. By accepting applications that did not include the signature page, an essential part of certifying that the information in the application is correct,

Cote and Presh acted in deliberate ignorance of whether the information contained in the application was correct. In fact, the Government agreed that not including a signer page “certainly disqualifies [the application] for approval of the loan (and would leave Confluence on the hook for breaching its duty to confirm certification).” R. at 80.

Ms. Moore again brought these concerns to her loan manager’s attention, but there was no action taken to combat these concerns. R. at 31. In fact, Lake told Ms. Moore that Cote felt like Ms. Moore was micromanaging him and that he did not feel like Moore felt confidence in his work. R. at 32. While Lake did not explicitly tell Moore to stop raising concerns about Cote’s work, there is a reasonable inference that Lake had the meeting to discourage Moore from bringing forward further concerns about Cote’s work. *See United States v. Bollinger Shipyards, Inc.*, 775 F.3d 255, 262 (5th Cir. 2014) (finding the district court erred in not viewing a letter, including its potential implications, in the light most favorable to the nonmoving party on the issue of scienter where the letter does not say on its face that steps should be taken to avoid review but “indicated” it); *U.S. ex rel. Willard v. Humana Health Plan of Texas, Inc.*, 336 F.3d 375, 385 (5th Cir. 2003) (finding that even a complaint that offered no specificity relevant to party’s intent at the time of contract fulfilled the loosened 9(b) requirement for state of mind).

The Government agreed with Ms. Moore’s claims that Cote’s behavior is unfitting but instead argued that the behavior of one loan officer was not enough to establish culpability under the FCA. R. at 76. However, *respondeat superior* is a well-established principle that holds that “an employer or principal liable for the employee’s or agent’s wrongful acts committed within the scope of the employment or agency.” RESPONDEAT SUPERIOR, Black’s Law Dictionary (11th ed. 2019). Cote was certainly working within the scope of employment when he was approving loans and was an agent of Confluence Bank, so his actions are sufficient under *respondeat superior*

to establish culpability under the FCA. Further, the Government ignores the fact that it was not only Cote's behavior that Ms. Moore called into question but the actions of Lake, Presh, and the Vice President that played the Mursea Hotels phone call over the loudspeaker. The Government also argued that at each opportunity to inform someone higher up of fatal misrepresentations, Ms. Moore "opted instead to... use the FCA as both sword and shield." R. at 74. However, the Government again ignores the pattern that Ms. Moore pled through her many allegations of false claims from Mursea Hotels, 3D6, and Blecher's Board Games as well as the many times that she raised these concerns to her manager.

4. Upper management knowingly created an environment that encouraged focus on approving as many loans as possible quickly without attention to compliance and quality control

Relator alleged that on March 6, 2019 and on June 9, 2019, emails were circulated to the Confluence Commercial Loans staff with an SBA PPP Report, including a list of the top PPP lenders nationally. R. at 33. In addition, on June 6, 2019, Confluence senior leadership chose to play the Mursea Hotels phone call regarding an \$18 million loan even though Ms. Moore had flagged the loan multiple times. R. at 34, 66. Relator also alleged she was told she should try to increase her average loan size and was assigned to Presh in response to red flags she was raising in order to "help move things along." R. at 32, 35. These facts, in conjunction with the larger fees that Confluence would earn with larger loans (R. at 39) and the many allegations of false claims Relator made, lead to a reasonable inference that Confluence approached the accuracy of its certifications with reckless disregard to maximize its own profit. *See United States v. Americus Mortg. Corp.*, No. 4:12-CV-02676, 2014 WL 4274279, at *10 (S.D. Tex. Aug. 29, 2014) (finding an allegation that the Defendants knowingly or with deliberate ignorance made a false certification

with a motive to maximize their own profits was sufficient). These allegations are sufficient to demonstrate that Confluence had the requisite scienter.

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT RELATOR DID NOT MEET THE PLEADING STANDARDS FOR MATERIALITY

Relator sufficiently alleged that the false statements in the PPP loans were material. The Supreme Court has instructed that a false statement is material if it “has a natural tendency to influence or [is] capable of influencing the decisionmaking body...” *United States ex rel. Longhi v. United States*, 575 F.3d 458, 468 (5th Cir. 2009) (citing *Neder v. United States*, 527 U.S. 1, 16 (1999) (alteration in original) (citations omitted) (quotation omitted)). This Court has also adopted three factors for materiality (“*Escobar* factors”): (1) “the Government’s decision to expressly identify a provision as a condition of payment”, (2) “evidence that the defendant knows that the Government consistently refuses to pay claims in the mine run of cases based on noncompliance with the particular statutory, regulatory, or contractual requirement” and (3) materiality “cannot be found where noncompliance is minor or insubstantial.” *See United States ex rel. Lemon v. Nurses To Go, Inc.*, 924 F.3d 155, 161 (5th Cir. 2019) (internal citations omitted) (quoting *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989, 2003 (2016)). None of the factors are dispositive and the inquiry is holistic. *Id.*

In deciding the question of materiality, the district court did not analyze Relator’s claims for materiality against these standards but instead simply stated that the “FCA is not intended to be used [sic] tool for punishing innocent regulatory violations...” R. at 98. The district court begged the question by assuming the regulatory violations raised by the Relator were innocent mistakes. The FCA is the Government’s “primary litigation tool for recovering losses resulting from fraud.” *U.S. ex rel. Steury v. Cardinal Health, Inc.*, 625 F.3d 262, 267 (5th Cir. 2010). Further,

the District Court made no reference to any of the false claims that Relator pled when deciding the issue of materiality.

- A. The Government expressly identified the false statements in Relator’s pleadings as conditions of payment, including the size of the small business, total revenues earned by certain businesses, and certifications of compliance

Ms. Moore’s allegations fulfilled the first factor in finding materiality because the false statements at issue are conditions of payment under Section 7(a) of the Small Business Act. 15 U.S.C. 636(a). Eligibility for the PPP loan is explicitly conditioned on the size of the business according to the NAICS standard. Section 1102(a)(36)(D)(i)(II). As a lender, Confluence had a duty to certify the information in the application. 85 Fed. Reg. 33010, 33013. Therefore, Confluence made a false claim based on a material statement regarding Mursea Hotel’s eligibility. In its investigation memo, the Government does not deny that Mursea Hotels exceeded the NAICS requirement and therefore was not eligible for the PPP loan, but it instead contends that the SBA may have paid out anyway based on average revenue falling below the \$35 million maximum. R. at 81. Similarly, the Defendant also made a false claim about 3D6’s eligibility. 3D6 exceeded the size standards in the CARES Act with double the number of employees. R. at 53. Even if 3D6 was somehow considered to be one of the industries in the NAICS standard, it would surpass the revenue maximum for any of the categories. R. at 55. The Government again did not deny that this claim was false or that the size standards disqualified the business from receiving the PPP loan but dismissed pursuing action against 3D6 because it would be “expensive.” R. at 80.

This Court, however, has adopted a broader interpretation of the “natural tendency to influence or capable of influencing” standard and requires only that the false statements “could have” or had the “potential” to influence the government’s decision and not that it did influence. *United States ex rel. Longhi v. United States*, 575 F.3d 458, 468 (5th Cir. 2009). Because of this,

the Government’s statement about the possibility that the SBA would still pay does not cut against a finding of materiality since it would have had the potential to influence the SBA’s decision as it is a key condition of eligibility. This is also true for 3D6, which surpasses the statutory condition of having no more than 500 employees. R. at 53. Even if 3D6 were considered one of the NAICS industries, it would surpass the revenue maximum for any of these businesses. R. at 53-54; *see also United States ex rel Lemon v. Nurses To Go, Inc.*, 924 F.3d 155 (5th Cir. 2019) (where certification requirements that Defendant allegedly violated were in the Medicare statute as condition for payment, false certification was material violation).

The applications approved without signer pages or initials would similarly support a finding of materiality under this factor. The Government agreed that having a signer page is a condition of approval for the loan when it said that the lack of signatures “*certainly* disqualifies [the application] for approval of the loan (and would leave Confluence on the hook for breaching its duty to confirm certification).” R. at 80 (emphasis added). This is similar to *Longhi*, where a statement from an evaluator who approved a claim was considered probative of materiality when he explained that he would have rejected the claim if the Defendant had included the information at issue. 575 F.3d at 472 (5th Cir. 2009).

Lastly, the application for Blecher’s Board Games cuts in favor of a finding of materiality. Relator flagged Blecher’s Board Games’ application because it did not include in financial records that it was owned by the 3D6 and likely had access to other capital. R. at 32. The fact that Blecher’s likely had access to other capital is material to the Government’s decision to make a PPP loan. In late April 2020, the Department of Treasury issued guidance that borrowers would have to certify whether they are able to obtain credit elsewhere. R. at 66. This was in response to companies like Mursea Hotels, which is a multimillion-dollar operation that received millions in PPP loans. *Id.*

Even though this guidance was issued after Blecher’s application, the fact that the Government specifically issued this direction signals that it considered alternative access to capital to be a material factor.

B. Government has conducted enforcement actions against similar FCA violations, and Defendants likely knew the Government would consistently refuse to pay claims that do not comply with the requirements

To meet the second Escobar factor, Ms. Moore alleged that the Government has enforced similar FCA violations, particularly in commercial lending and Medicaid and Medicare schemes, which is probative of materiality. R. at 83; *see also Lemon*, 924 F.3d at 155 (5th Cir. 2019) (finding the Relator’s allegations that the government agency has taken enforcement actions against others that failed to conduct appropriate certifications was probative of materiality). The CARES Act is still very new, so there is a unique difficulty in alleging the Government consistently refused to pay claims based on noncompliance with the PPP, but the Relator did allege similar enforcement actions.

In addition to government enforcement, proof of materiality in this factor can also include evidence that the Defendant knows the Government consistently refuses to pay claims that do not comply with the requirement. *Universal Health Servs., Inc. v. United States*, 136 S. Ct. 1989, 2003, 195 L. Ed. 2d 348 (2016). The Mursea Hotels application is helpful on this point. Despite the Government finding that the Mursea Hotels phone call was not indicative of knowledge (R. at 81), viewing this phone call in the light most favorable to the nonmoving party would support the inference Wanda and Don Rees and Confluence were surprised because they expected the Government to find that Mursea Hotels was ineligible and reject the claim. The applications that were pre-filled with a “No” response also support a finding of materiality. These false statements to Questions 1, 2, 5, and 6, are of particular importance to the PPP loan because a “Yes” response

would require the lender reject the application. R. at 31. In fact, there have been numerous cases where a “Yes” response to this question led to a denied PPP application. *See Defy Ventures, Inc. v. U.S. Small Bus. Admin.*, No. CV CCB-20-1736, 2020 WL 3546873, at *4 (D. Md. June 29, 2020) (suit by plaintiffs who were denied PPP loans because of one of these questions). The Defendant knows the Government would consistently refuse to pay these claims because the Government has explicitly required the lender to reject any loans with a “Yes” answer to any of these questions. R. at 31.

Escobar also found that evidence the Government paid a particular claim in full despite actual knowledge that certain requirements were not met could support a defense under this factor. *See United States ex rel. Emerson Park v. Legacy Heart Care, LLC*, No. 3:16-CV-0803-S, 2019 WL 4450371, at *8 (N.D. Tex. Sept. 17, 2019). However, there is no indication that the Government had actual knowledge of any of the false statements Ms. Moore pled.

Further, even if Ms. Moore did not meet this factor, each of the *Escobar* factors is not dispositive, and it is not required that Relator assert specific prior government enforcement actions prosecuting similar claims. *See Lemon*, 924 F.3d at 162 (5th Cir. 2019) (finding “it would be illogical to require a relator to plead allegations about past government action in order to survive a motion to dismiss when such allegations are relevant, but not dispositive.”) (quoting *United States ex rel. Prather v. Brookdale Senior Living Communities, Inc.*, 892 F.3d 822 (6th Cir. 2018)).

C. Compliance with the requirements at issue is not minor or insubstantial because a reasonable person would attach importance to requirements that are conditions of receiving PPP loans

Finally, a violation is not material where “noncompliance is minor or insubstantial.” *Escobar*, 136 S. Ct. at 2003 (2016). A violation is material if a reasonable person would “attach importance to [it] in determining” an action or if the defendant knew or had reason to know “the

recipient of the representation attaches importance to the specific matter” even where a reasonable person would not. *Lemon*, 924 F.3d at 163 (5th Cir. 2019). For Mursea Hotels, 3D6, Blecher’s Board Games, Liberation Booksellers, and Linda Beauty Bar, it is clear that the false statements at issue would have disqualified the applications for a PPP loan because the issues involved in each of these applications were conditions of payment. See *Lemon*, 924 F.3d at 163 (5th Cir. 2019) (finding that where the allegations are sufficient to establish the Government would deny payment, the Court also concluded that “Government would attach importance to the underlying violations”). Particularly with Linda Beauty Bar’s and Liberation Booksellers’ applications, the Government found that the failures in the application “certainly disqualifie[d] [applicant] for approval of the loan.” R. at 80. Further, the loans at issue in this case amount to millions of dollars, particularly a \$18 million loan to Mursea Hotels and a \$10 million loan to 3D6., which renders the conditions of payment quite substantial. R. at 32-33.

D. The district court inappropriately relied on the Government’s investigation in finding lack of materiality

In finding Ms. Moore did not adequately plead materiality to support her claim that Confluence violated the False Claims Act, the district court found “Relator has also not alleged that the Government had a hidden motive not to investigate her claims.” R. at 98. The district court relies on the Government’s investigation and memo as a full picture of the allegations at hand and uses them to quickly dismiss the Relator’s allegations of materiality, seemingly under a theory that the Government’s moving to dismiss Relator’s claims is demonstrative of the lack of materiality. However, it is unnecessary for the Relator to allege that the Government had a hidden motive not to investigate her claims for Relator to show that the FCA violations are material or even have scienter. Instead, the Relator has sufficiently alleged there was materiality according to the *Escobar* factors.

Applicant Details

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 Last Name **Maroun**
 Citizenship Status **U. S. Citizen**
 Email Address pgmaroun@umich.edu
 Address

Address

Street
112 W 80th St, Apt 3R
 City
New York
 State/Territory
New York
 Zip
10024

Contact Phone Number **7817528301**

Applicant Education

BA/BS From **Fordham University**
 Date of BA/BS **June 2015**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 9, 2019**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Michigan Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/
 Externships **Yes**
 Post-graduate Judicial
 Law Clerk **No**

Specialized Work Experience

Recommenders

Cantwell, Helen
hcantwell@debevoise.com
212-909-6312

Barry, Patrick
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Rauterberg, Gabriel
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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January 24, 2022

The Honorable Eric N. Vitaliano
U.S. District Court for the Eastern District of New York
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Vitaliano:

I am a 2019 graduate of the University of Michigan Law School and a 2015 graduate of Fordham University, writing to apply for a clerkship position in your chambers during the 2023–24 term.

I have attached my resume, my law school and undergraduate transcripts, and a writing sample for your review. Letters of recommendation from a partner at Debevoise & Plimpton LLP and two Michigan Law professors are also attached:

- Ms. Helen V. Cantwell: hcantwell@debevoise.com, 212.909.6312
- Professor Patrick Barry: barrypj@umich.edu, 734.763.2276
- Professor Gabriel Rauterberg: rauterb@umich.edu, 734.763.7212

Thank you for your time and consideration.

Respectfully,

Patrick G. Maroun

Patrick G. Maroun

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EDUCATION

University of Michigan Law School Ann Arbor, MI
Juris Doctor, Cum Laude (3.688/4.0 GPA) May 2019
 Publication: *More Than Birds: Developing a New Environmental Jurisprudence Through the Migratory Bird Treaty Act*, 117 MICH. L. REV. 789 (2019)
 Activities: *Michigan Law Review* Vol. 117, Executive Editor; Vol. 116, Associate Editor
 Research Assistant to Professors Patrick Barry and Gabriel Rauterberg

Fordham University Bronx, NY
Bachelor of Arts, Theology and Political Science June 2015

EXPERIENCE

Debevoise & Plimpton LLP New York, NY
Associate September 2019 – Present
Summer Law Clerk May – July 2018

- Develop factual background, draft interview memoranda, analyze relevant legal and regulatory frameworks, and draft talking points for presentations to regulators in internal investigations
- Conduct legal research, evaluate relative strength of potential claims and legal arguments, and review documentary evidence in complex commercial litigation
- Draft briefs and motions in pro bono representations in immigration and criminal matters

Michigan Law Unemployment Insurance Clinic Ann Arbor, MI
Student Attorney August – December 2018

- Prepared bench memorandum in mock oral argument for counsel representing Michiganders falsely accused of fraud by Unemployment Insurance Agency in case before the Michigan Supreme Court
- Drafted major portions of the clinic's "white papers" to Michigan Governor-Elect Gretchen Whitmer's transition team on restoring fair administration of the unemployment insurance system and providing compensation to Michiganders falsely accused of fraud by the Unemployment Insurance Agency

Student Attorney January – May 2017

- Obtained administrative ruling of eligibility for employment benefits under supervision of clinic director

U.S. District Court for the District of Massachusetts, Hon. Indira Talwani Boston, MA
Legal Intern May – August 2017

- Prepared bench memoranda on various proceedings before the court, including a motion to dismiss, a motion for judgment on the pleadings, and competing motions to reverse/affirm the decision of the Commissioner of the Social Security Administration
- Drafted order denying motion to dismiss Title IX claim

City Year Denver Denver, CO
AmeriCorps Member, Literacy Coordinator July 2015 – June 2016

- Tailored small-group and individual academic support to 45 low-income third grade students
- Designed and led three-day training for City Year Members and staff on causes and effects of gentrification in the communities served by City Year Denver
- Organized two-round, multi-school spelling bee with Literacy Coordinators at three other schools

ADDITIONAL

Language Skills: German (basic) **Interests:** Boston and Michigan sports, folk and rock music, spicy food